



## Statement of Reasons for a Decision on Controlled Action Under the *Environment Protection and Biodiversity Conservation Act 1999*

I, KYLIE CALHOUN, Branch Head of Environment Assessments West, Department of Climate Change, Energy, the Environment and Water (**department**), provide the following statement of reasons for my decision of 26 September 2024, as delegate for the Minister for the Environment and Water (**the Minister**), under section 75 of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**), that the proposed action by Department of Transport (Westport Project Office) (**proponent**) to construct and operate a new multimodal port facility, including; a second main shipping channel, offshore breakwater, access channels, turning basins, berthing areas, navigational aids, and landside development (**proposed action**), is a controlled action and the controlling provisions are sections 18 and 18A (listed threatened species and communities), sections 20 and 20A (listed migratory species), sections 23 and 24A (Commonwealth marine areas) and sections 26 and 27A (Commonwealth land).

### Legislation

- 1) Extracts of the EPBC Act relevant to my decision are set out at [Annexure A](#).

### Background

- 2) The proposed action was referred to the Minister under section 68 of the EPBC Act on 28 June 2024.
- 3) I determined the proposed action to be a **controlled action** under section 75(1) of the EPBC Act on 26 September 2024.
- 4) On the same day as the controlled action decision, I determined under section 87(1) that the proposed action was to be assessed by a Public Environment Report (**PER**).

### Description of the proposed action

- 5) The proposed action is to construct and operate a new multimodal port facility including a second main shipping channel, offshore breakwater, access channels, turning basins, berthing areas, navigational aids, and landside development in the Kwinana Industrial Area (**KIA**), approximately 30 km south of Perth, Western Australia (**WA**). The proposed action is located on both land and sea.
- 6) The land-based works are in proximity to the intersection of Beard Street and Leath Road, Naval Base, WA (**terrestrial project area**).
- 7) The sea-based works (**marine project area**) are primarily located in between the coastline, Garden Island and Rottnest Island, with the cadastral parcel broadly aligning with the extent of the Port of Fremantle Outer Harbour, however, a second main shipping channel extends from the northern boundary of Cockburn Sound to the Indian Ocean, extending across Owen Anchorage and Gage Roads.

- 8) At the time the referral was made, the referral documentation stated that the proposed project was at a preliminary design stage, which was 15% of total design stage, and provided only indicative footprints of impact areas which would be subject to change and variability. The proposed envelopes and indicative footprints of the terrestrial and marine project areas associated with the proposed action consisted of:
  - a) Development envelope – approximately 1683 hectares (ha) (two areas: Port facility = 841 ha; Second main shipping channel = 842 ha).
  - b) Port facility:
    - i. Proposed project area – 841 ha (indicative footprint).
    - ii. Port facility – 276 ha (indicative footprint).
    - iii. Offshore breakwater – 22 ha (indicative footprint).
    - iv. Access channels, turning basins and berthing areas – 235 ha (indicative footprint).
    - v. Landside development (including connections to existing road and rail infrastructure up to the vicinity of Rockingham Road and temporary construction infrastructure) – 89 ha (indicative footprint).
  - c) Second main shipping channel:
    - i. Proposed project area – 842 ha (indicative footprint).
    - ii. Second main shipping channel – 626 ha (indicative footprint).
- 9) The referral documentation stated that disturbance of approximately 1683 ha of both marine and terrestrial environment will be undertaken to facilitate the construction and operation of the infrastructure listed above.
- 10) The referral documentation stated that the proposed action includes the following construction components:
  - a) Capital dredging - estimated at a total volume of 35 million cubic metres,
  - b) Reclamation works - use of dredging material for beneficial re-use (primarily reclamation) and, where required, placement in approved marine placement areas (yet to be defined),
  - c) Terrestrial bulk earthworks,
  - d) Pile driving works,
  - e) Relocation, removal or upgrade of existing infrastructure, structures, and buildings, including:
    - i. The removal of the disused Kwinana Bulk Berth 1 (KBB1) Jetty,

- ii. The removal of the Kwinana Bulk Berth 2 (KBB2) Jetty, with replacement infrastructure to be constructed as a component of the port facility,
- iii. Temporary construction infrastructure; and
- iv. Maintenance of all infrastructure and assets, including maintenance dredging.

11) The referral documentation outlined that maintenance dredging over the long-term operational lifespan of the port was not yet fully defined and would be undertaken, as required, to support future port operations and maintain capital dredge widths and depths.

## **Description of the Environment**

### Tenure

- 12) The tenure of the terrestrial project area extends across 57 separate land parcels, of which 70% are currently under state government ownership or control (as freehold land or reserves) including by the State of Western Australia, Western Australian Land Authority, Fremantle Port Authority, Commissioner of Main Roads, and Water Corporation. A further (approximate) 30% of land parcels are currently owned in freehold by private entities or individuals, such as BP Refinery (Kwinana), Adelaide Brighton Cement, and BGC (Australia).
- 13) The marine project area is within marine Lot 4552 on Deposited Plan 220690, which is owned by the State of Western Australia and vested with the Fremantle Port Authority.
- 14) All of the marine project area is contained within state-controlled coastal waters, and the proposed action area does not intersect any Commonwealth-controlled waters or Commonwealth marine areas, with the nearest Commonwealth marine area being approximately 3 nautical miles from the northern extent of the proposed second main shipping channel.
- 15) The proposed marine action area is currently subject to significant intense utilisation by large and small vessels transiting into Cockburn Sound via Success Channel with designated anchorage areas located along the western portion of Cockburn Sound.
- 16) For many decades, Cockburn Sound has supported a range of commercial, industrial and defence uses, including extensive port facilities, a strategic national naval base and marine maintenance shipyards. It also supports many recreational activities in the marine environment including dolphin and Little Penguin tourism, recreational fishing for species such as blue swimmer crabs and pink snapper, as well as mussel aquaculture.
- 17) The proposed marine action area designated to the second main shipping channel is offshore and supports recreational activities such as boating and fishing.

### Terrestrial environment

- 18) The terrestrial project area is located on the western edge of the Swan Coastal Plain, within the subregion SWA02 as described by the Interim Biogeographic Regionalisation for Australia (IBRA). The Swan Coastal Plain is a low lying coastal plain dominated by Banksia or Tuart on sandy soils.

- 19) The SWA02 subregion comprises a total of approximately 1.3 million ha and is characterised by colluvial and aeolian sands, alluvial river flats and coastal limestone.
- 20) The KIA has been the primary, strategically located heavy industrial area servicing the Perth metropolitan region since the early 1950s and has been strategically separated from sensitive land uses, such as urban areas, to avoid potential land use conflicts. Terrestrial ecological values within the proposed project area have been subject to high levels of historical disturbance and limited remnant vegetation and associated fauna habitat remains in the local area.
- 21) The proposed action area does not intersect or adjoin any existing conservation areas. The nearest conservation areas are approximately 3 km north of the proposed action area, being the Mt Brown conservation reserve within Beeliar Regional Park, and a State Bush Forever site (346).

#### *Elevation*

- 22) The majority of the proposed terrestrial action area is flat with a gentle slope and minor dunal undulation in some discrete areas. Elevation ranges from 0 mAHd along the coastline in the west, up to 22 mAHd in the far eastern areas in proximity to the intersection of Rockingham Road and Anketell Road.

#### *Soils*

- 23) The proposed project area is located on the Quindalup Dune system, which is characterised by uniform pale calcareous sands that are well to rapidly drained and consist of wind-blown lime and quartz beach sand.
- 24) The eastern-most portion of the project area extends into the Spearwood dune system which is characterised by yellow-brown siliceous sands over limestone, with hilly to gently undulating terrain.

#### *Vegetation*

- 25) Vegetation complexes identified within the terrestrial action area are the Quindalup Complex and the Cottesloe Complex – Central and South.
- 26) The Quindalup Complex is a coastal dune complex consisting of two main alliances, the strand and foredune alliance, and the mobile and stable dune alliance. The native vegetation extent within the proposed action area is 14.6 ha, of which 5.7 ha is identified as regrowth vegetation.
- 27) The Cottesloe Complex – Central and South is a mosaic woodland of Tuart (*Eucalyptus gomphocephala*) and open forest of Tuart (*Eucalyptus gomphocephala*) – Jarrah (*Eucalyptus marginata*) – Marri (*Corymbia calophylla*) and closed heath on the limestone outcrops. The native vegetation extent within the proposed terrestrial action area is 13.3 ha of which 5.5 is identified as regrowth vegetation.
- 28) 69.92% of the proposed terrestrial project area has been identified as 'cleared' with 5.05% not assessed. Vegetation condition ranges from 'completely degraded' (1.79%) to 'excellent' (0.46%), with the majority being degraded (12.15%).

- 29) There is one declared pest, the Narrow-leaved Cotton Bush (*Gomphocarpus fruticosus*), and one declared pest and weed of national significance - the Bridal Creeper (*Asparagus asparagoides*). Both were recorded throughout the proposed terrestrial project area.
- 30) Given the extensive historical disturbance across the KIA and within the proposed terrestrial project area, plant diseases such as dieback (*Phytophthora cinnamomi*) may exist. Dieback was not confirmed as the area had not been surveyed for its presence.

#### *Hydrology - groundwater*

- 31) Groundwater underlying the proposed terrestrial action area is expected to be contained within the Superficial aquifer located in unconsolidated dune sands and recharged by local rainfall and a lower, semiconfined aquifer contained in the karstic limestone where a non-continuous clay layer acts as an aquitard.
- 32) Tidally influenced groundwater within the proposed terrestrial action area is expected to be encountered between 3 to 4 meters (m) below ground level and flow in a west to north westerly direction.
- 33) Existing groundwater extraction and monitoring bores occur throughout the proposed terrestrial action area. The majority of which access the superficial aquifer and are used for a variety of purposes including commercial, industrial, water supply and groundwater monitoring.
- 34) A preliminary site investigation concluded that groundwater quality across the proposed terrestrial action area is variable, with historical groundwater investigations reporting impacts from hydrocarbons, metals, nutrients, and excess alkalinity, which are expected to flow towards Cockburn Sound. Existing vegetation within the proposed terrestrial action area may either uptake, or be dependent upon, groundwater from the underlying superficial aquifer.

#### *Hydrology – surface water*

- 35) The proposed terrestrial action area is generally flat, with no surface water features such as rivers, creeks, drains, or flow paths mapped within, or passing through, the area. Based on the topography, Cockburn Sound is the primary sensitive environmental receptor downstream of the proposed action area.
- 36) The underlying sandy soils are characterised by high permeability, meaning that rainfall is typically expected to freely infiltrate at source in undeveloped areas within the proposed terrestrial action area. Surface water flows are likely driven by anthropogenic features such as hardstand runoff and constructed drainage areas. Most of the KIA consists of an absence of contemporary stormwater infrastructure to manage the quality of any surface water runoff.

#### *Hydrology - wetlands*

- 37) Geomorphic wetland mapping for the Swan Coastal Plain does not identify any wetland features as occurring within the proposed terrestrial action area. The nearest mapped wetland is a 2.12ha Resource Enhancement Wetland approximately 40 m from the development envelope, located to the northeast of the Rockingham Road and Anketell Road intersection.

## Marine environment

### *Cockburn Sound*

- 38) Most of the marine components of the proposed action are located within the eastern portion of Cockburn Sound on the Kwinana Shelf.
- 39) Cockburn Sound is a semi-enclosed marine embayment, covering approximately 110 km<sup>2</sup>. To the south and east Cockburn Sound is bound by coastline, to the north by Woodman Point and Parmelia Bank, and to the west by the barrier island of Garden Island. The bathymetry of Cockburn Sound is characterised by a relatively deep central basin with a depth varying between 17-22 m, with shallower surrounding areas.
- 40) The southern end of Cockburn Sound previously had a natural opening to the Indian Ocean between the southern end of Garden Island and the western tip of Point Peron. In 1973 this opening was bridged by the construction of a 4.2 km causeway to link Garden Island to the mainland as part of the construction of the HMAS Stirling naval base. The causeway is predominantly solid rock revetment with two openings spanned by bridges, 600m wide and 300m wide respectively, to allow limited exchange of seawater between Cockburn Sound and the Indian Ocean. This construction modified natural flow regimes within Cockburn Sound and resulted in exacerbation of the trapping of nutrient-rich water that contributes to ongoing water quality issues within Cockburn Sound.
- 41) For many decades, Cockburn Sound has supported a range of commercial, industrial and defence uses including extensive port facilities, designated anchorage areas, commercial aquaculture, a strategic naval base and marine maintenance shipyards. It also supports many marine-based recreational activities, including dolphin and Little Penguin tourism, boating and recreational fishing for species such as blue swimmer crabs and pink snapper.
- 42) Seagrass is a keystone species within Cockburn Sound's benthic marine environment. Species include perennial seagrasses such as *Amphibolis griffithii* and *Posidonia australis*, as well as ephemeral seagrasses such as *Halophila ovalis*, recorded before the introduction of heavy industrial land uses in the 1950's. Following historical declines, seagrass meadow coverage in Cockburn Sound stabilised to approximately 950 ha in 2018.
- 43) The Western Australian Marine Science Institution (WAMSI), on behalf of the proponent, are currently developing a contemporary map of the current extent of seagrass and other benthic habitat types within the proposed action area, including Cockburn Sound, Owen Anchorage and Gage Roads.
- 44) The waters of Cockburn Sound are a temperate environment for marine fauna and flora; however, tropical species are also found due to the influence of the Leeuwin Current which seasonally brings warm, low-nutrient waters from the north.
- 45) Cockburn Sound and surrounding northern waters have been subject to various historical and ongoing dredging campaigns including to establish and maintain various navigational channels, as well as ongoing shell-sand dredging since 1972.

- 46) The Perth Seawater Desalination Plant (PSDP) intake and outfall structures are located directly adjacent to the northern shoreline intercept of the proposed port facility development envelope. The PSDP intakes seawater from Cockburn Sound for the desalination process and then discharges the highly saline water back into Cockburn Sound on the Kwinana Shelf at a depth of approximately 10 m.

#### *Offshore*

- 47) The proposed second main shipping channel extends from the northern edge of Cockburn Sound across Owen Anchorage and Gage Roads, connecting with the Indian Ocean to the north. This offshore marine component of the proposed action area is located adjacent to the South-west Marine Region, a Commonwealth marine area.
- 48) The low-nutrient environment of the South-west Marine Region results in clear waters and high levels of light penetration, giving rise to a continental shelf characterised by high diversity of seagrass, algal species, and benthic communities. In turn, these habitats and communities provide habitat for a large variety of species and function as nurseries for a range of fish and invertebrates, which move further offshore in their adult stages.
- 49) The existing shipping channel, the Success Channel, is a narrow 150 m dredged channel approximately 15 m deep that extends shoreward through Parmelia Bank, Owen Anchorage and Success Bank into Gage Roads. The proposed second main shipping channel is to be located parallel to the east of the Success Channel.

#### **Procedural History**

- 50) A valid referral was received on 15 April 2024 from the Westport Project Office, which stated the belief that the proposed action is a controlled action for the purposes of the EBPC Act.
- 51) As required by section 74(3) of the EPBC Act, the referral was published on the department's website on 28 June 2024 and public comments were invited for a period of 10 business days until 12 July 2024.
- 52) Also on 28 June 2024, in accordance with sections 74(1) and 74(2) of the EPBC Act, the following Commonwealth and State Ministers (or their representatives) were invited to comment on the referral:
- a) The Hon. Madeleine King MP, Minister for Resources and Minister for Northern Australia.
  - b) Ms Suzanne Hinchcliffe, Assistant Secretary, Property and Construction Division, Department of Finance.
  - c) Ms Berlinda Bowler, Director, Directorate of Environmental Planning, Assessment and Compliance (DEPAC), Department of Defence.
  - d) The Hon. Catherine King MP, Minister for Infrastructure, Transport, Regional Development and Local Government.
  - e) Mr Alistair Jones, the Director General, WA Department of Water and Environmental Regulation (DWER), as the delegated contact for the WA Minister for Environment and Climate Action.

- 53) On 16 August 2024, the department sought further clarification on the foraging habitat area for Black Cockatoos to be cleared by the proposed action under section 76 of the EPBC Act.
- 54) On 22 August 2024, the proponent provided revised information on foraging habitat to be impacted by the proposed action, advising that 1.59 ha of low-quality foraging habitat for Forest Red Tailed Black Cockatoo (FRTBC) occurs within the proposed action area. It was also advised for Carnaby's Black Cockatoo, that 4.76 ha of foraging habitat occurs within the proposed action area, comprising 2.31 ha of low quality, and 2.45 ha of low-moderate quality.
- 55) On 26 September 2024, I decided under section 75 of the EPBC Act that the proposed action is a controlled action and that the controlling provisions for the proposed action are sections 18 and 18A (listed threatened species and communities), sections 20 and 20A (listed migratory species), sections 23 and 24A (Commonwealth marine areas) and sections 26 and 27A (Commonwealth land).
- 56) On 26 September, I also decided under section 87 of the EPBC Act that the proposed action be assessed by public environmental report (PER) under Division 5 of Part 8 of the EPBC Act.

### **Evidence or other material on which my findings were based**

- 57) In making my decisions under sections 75 and 87 of the EPBC Act, I read and considered the referral decision brief (and its attachments) prepared by officers of the department (**decision brief**), which I signed on 26 September 2024. Annexure B sets out in full the documents attached to the decision brief.
- 58) On the basis of this information, I accepted the department's advice that there was enough information available to make a decision under section 75 of the EPBC Act.

### **Public comments**

- 59) I noted that 26 public comments were received on the referral. I accepted the department's advice that I must consider all comments received in response to the invitation under s 74(3), received within the public comment period, and I did so. I considered the department's summaries of all submissions received and the department's advice on the relevant matters raised in these public comments.
- 60) I noted that multiple public comments suggested that the proposed action should be found to be a controlled action.
- 61) I noted that the public comments raised issues including:
- a) Community concerns linking the AUKUS nuclear submarine facility to the proposed action, due to the proximity between it and the Garden Island and Stirling Naval Bases. Highlighting safety concerns surrounding the operation of nuclear armed vessels near an international port.
  - b) Concerns regarding the impact on the environment and Matters of National Environmental Significance (**MNES**):
    - i. The importance of Cockburn Sound and surrounds as areas of significant biodiversity and ecological function and the ecological degradation associated with the proposed dredging works.



- ii. The importance of Cockburn Sound and surrounds as a nursery site and foraging ground for MNES such as migratory shorebirds and marine species, as well as terrestrial species such as black cockatoos which were said to utilise the vegetation along the shore.
  - iii. Concerns for the Little Penguin populations in Warnbro Sound and Penguin Island and the colony on Garden Island which feed almost exclusively in Cockburn Sound.
  - iv. A claim that the Western Australian Environmental Protection Authority (**WA EPA**) has highlighted the protection of the seagrass in Cockburn Sound as one of their commitments.
  - v. Advice that additional research is required to determine appropriate mitigation measures for the seagrass in Cockburn Sound.
  - vi. Impacts to the local recreational and commercial fishing industry, including to important spawning grounds and sardine populations.
  - vii. Impacts to water quality within Cockburn Sound, and associated implications for the Kwinana desalination plant.
  - viii. The unique characteristics of Cockburn Sound, such as wave and current patterns and the need for this to be considered when modelling the deposition of silt and the use of silt curtains during dredging to prevent impacts from sedimentation.
  - ix. Concern about dredging and that approval should not be given for the dumping of dredged material until the cumulative impacts, including those from the Department of Defence's Submarine Response Force, are defined and accounted for.
  - x. Uncertainty about why the project's claims that deepening and widening an existing shipping channel is more damaging than constructing a new channel of the same dimensions.
  - xi. The long-term impacts of toxins associated with ports, such as copper, cadmium and tributyltin on benthic organisms.
  - xii. A view that since European Settlement, industrialisation and overuse have pushed Cockburn Sound to near ecosystem collapse.
  - xiii. That proposed mitigations to support wildlife require careful review so as to discourage some species such as sea lions from using the operational shipping areas or port storage areas; and
  - xiv. A view that noise mitigation measures are unlikely to manage noise to levels that will not disturb wildlife.
- c) Concerns regarding the impact to social and cultural values:
- i. Advice that there are significant cultural and social values associated with Cockburn Sound to the Nyungar people and the City of Cockburn residents.

- ii. Impacts on the aquacultural, recreational, cultural and industrial uses of Cockburn Sound, such as recreational and commercial fishing, and sailing.
  - iii. Opposition to an accredited assessment approach between the state and the Commonwealth due to the political interests associated with the proposed action.
  - iv. The view purporting a lack of confidence in the EPBC Act.
  - v. Impacts from required major road modifications to commuters. Specifically, that freight operations should remain at Fremantle port and be supported by new necessary upgrades to the existing Geraldton and Bunbury ports. This would meet logistical demands, create jobs and encourage people to move to the regional towns.
  - vi. The view that the referral does not contain enough relevant data to enable an informed decision.
  - vii. The view that the referral provided a thorough discussion on mitigation of the environmental damage.
  - viii. The view that the impacts associated with the proposed Anketell Road upgrade, and any future road upgrades required to support the proposed action, should be included in this EPBC assessment.
  - ix. Concerns regarding the adequacy of stakeholder engagement, as a Westport-funded survey found over 50% of shore-based fishers and 40% of boat-based fishers had not heard about the proposed container port.
  - x. The view that works should not begin until carbon emissions from both construction and operation have been quantified and factored into 'zero net carbon by 2050' targets within the Department of Transport's Environmental, Social and Governance framework.
  - xi. Multiple requests for the proposed action to be deemed a controlled action.
- 62) On 10 July 2024, Geoscience Australia responded on behalf of the Minister for Resources and Minister for Northern Australia and noted:
- a) That the proposal is not associated with MNES of proposed nuclear actions, Commonwealth marine areas or actions likely to have a direct or indirect impact on a water source from unconventional gas or large coal mining development and therefore provide no further comment.
- 63) On 10 July 2024 the Department of Finance responded and stated nil comments.
- 64) On 12 July 2024, the Department of Defence responded and provided comments and a request for a further analysis and understanding on certain matters related to the following:
- a) potential impacts to aquatic habitats, seagrass persistence and any other potential changes to existing aquatic conditions along the eastern coastline of Garden Island as a result of

changes to water movement in Cockburn Sound following the addition of the proposed wharf and seawall;

- b) potential changes to sediment movement and water quality within the Navy's operational space, and/or new wharf maintenance/dredging requirements at HMAS Stirling and Armament Wharf as a result of Project infrastructure;
- c) potential biosecurity impacts as a result of Project construction and ongoing operation;
- d) potential navigational impacts including:
  - i. how encroachment into naval anchorage points will be avoided;
  - ii. potential impacts from transits south into Garden Island via the adjacent shipping lanes as a result of the work to dredge the new shipping lane;
  - iii. whether the increased maritime traffic might impact naval operations in the area and planned use of nuclear powered submarines;
  - iv. potential impacts from competing construction timelines with planned works on Garden Island and this Project.

65) No comment was received from the Minister for Infrastructure, Transport, Regional Development and Local Government.

66) I considered the matters raised in these comments from Commonwealth Ministers to the extent they were relevant to the determination of whether the proposed action is a controlled action.

#### **Comments from state Ministers**

67) On 28 June 2024, in accordance with section 74(2) of the EPBC Act, comments on the referral were invited from Mr Alistair Jones, the Director General, WA Department of Water and Environmental Regulation (DWER), as the delegated contact for the WA Minister for Environment and Climate Action.

68) On 9 July 2024, the Director General of DWER responded on behalf of the WA Minister for Environment and Climate Action, noting that:

- a) the WA EPA had received a permit application related to this proposal and determined that assessment would be by Public Environmental Review under s.40(2)(b) of the *Environmental Protection Act 1986*. The proponent was preparing the environmental scoping document to establish the content of the Public Environmental Review documentation.

69) I considered the matters raised in this comment by the WA Minister for Environment and Climate Action, to the extent it was relevant to the determination of whether the proposed action is a controlled action.

#### **Findings on material questions of fact**

##### **Is the proposed action part of a 'Larger Action'?**

70) Before determining whether the proposed action was a controlled action, I considered whether the proposed action was a component of a larger action that the proponent proposes to take,

and, if so, whether I should decide not to accept the referral pursuant to the discretion in section 74A(1) of the EPBC Act.

- 71) Section 74A(1) of the EPBC Act states that if the Minister is satisfied the action that is the subject of the referral is a component of a larger action the person proposes to take, the Minister may decide not to accept the referral. I noted the department's advice that this is a discretionary decision and, as such, I was not obliged to exercise the power.
- 72) I noted that the *EPBC Act Policy Statement – Staged Developments – Split referrals: Section 74A of the EPBC Act* provides guidance on when the discretion should be exercised, and states that “[a] referred action that is part of a larger action can be refused only if there is a reasonable basis for doing so. The key question for the Minister is: does the splitting of the project reduce the ability to achieve the objects of the Act?”
- 73) I noted that Anketell Road Upgrade (Leath Road to Kwinana Freeway) (**the Anketell Road Upgrade**) (EPBC 2024/09841) was referred to the department for a decision by the Commissioner for Main Roads, on 4 July 2024. The Anketell Road Upgrade project proposes to upgrade and widen Anketell Road to an expressway standard for approximately 7.5 km between Leath Road and Kwinana Freeway in the City of Kwinana, WA. The Anketell Road Upgrade project's proposed development envelope adjoins directly to the proposed action area and the road upgrade planned is in direct response to the need to widen Anketell Road to accommodate the additional road freight requirements generated by the proposed port facility which forms part of the proposed action. Three public comments expressed the view that the Anketell Road Upgrade should be considered as part of the Outer Harbour Port Development, Kwinana (EPBC 2024/09859) action.
- 74) Consistent with the *Policy Statement – Staged Developments – Split referrals: Section 74A of the EPBC Act* and the department's recommendation, I decided that the proposed action is a not part of a larger action that incorporates the Anketell Road Upgrade because:
- Although I noted that the Anketell Road action is related to the proposed action, it is not co-dependent on the Outer Harbour Port Development, Kwinana (EPBC 2024/09859) as both can be constructed independently and in the absence of the other.
  - There is a 10-year timeframe between the two actions as the Outer Harbour Port Development, Kwinana (EPBC 2024/09859) action has a construction timeframe of 15 years, whereas the Anketell Road Upgrade action has a construction timeframe of 5 years. If the Outer Harbour Port Development is not built, the Anketell Road Upgrade will remain and will continue to service the KIA.
  - The two actions are also not funded from a single funding source and are to be undertaken by two separate entities (different proponents), being the Commissioner for Main Roads and the Department of Transport (Westport Project Office).
  - The referral documentation states that the Outer Harbour Port Development, Kwinana (EPBC 2024/09859) can be implemented to connect into the existing road and rail network. The referral documentation also states that if future road infrastructure upgrades in the local area are progressed by others to address network capacity needs (for example, future

upgrades to the Anketell Road freight corridor progressed by the Commissioner for Main Roads), then the layout of the proposed action will integrate with any such upgrades to the road network.

- 75) I noted the department's advice that, if I disagreed with the department's finding that the proposed action is not part of a larger action, I may exercise discretion to refuse the referral. However, for the reasons outlined above, and in the decision brief, I considered that the referred action and the activities described as the Anketell Road Upgrade do not comprise a larger action proposed to be undertaken by the same proponent.

**Is the proposed action a controlled action?**

- 76) As a delegate of the Minister, I was required under section 75 of the EPBC Act to decide whether the proposed action is a controlled action, and which provisions of Part 3 (if any) are controlling provisions for the proposed action.
- 77) Section 67 of the EPBC Act provides that an action is a controlled action if the taking of the action, without the Minister's approval for the purposes of a provision of Part 3, would be prohibited by the provision (the controlling provision for the action).
- 78) In accordance with section 75(2) of the EPBC Act, in making my decision, I considered all adverse impacts the proposed action has, will have, or is likely to have on matters protected by each provision of Part 3 of the EPBC Act. I did not consider any beneficial impacts the proposed action has, will have or is likely to have on the matters protected by each provision of Part 3 of the EPBC Act.
- 79) Having regard to the matters relevant to my decision and the information before me (in the decision brief and listed at Annexure B), I agreed with the department's recommendation that the proposed action is a controlled action because it is likely to have a significant impact on the following matters protected by Part 3 of the EPBC Act:
- a) Listed threatened species and communities (sections 18 and 18A)
  - b) Listed migratory species (sections 20 and 20A)
  - c) Commonwealth marine area (sections 23 and 24A)
  - d) Commonwealth land (sections 26 & 27A)

**Part 3 provisions that are controlling provisions**

**Listed threatened species and communities (sections 18 & 18A)**

- 80) I noted that the department's Protected Matter Search Tool (**PMST**) report 16 September 2024 identified 74 listed threatened species and three threatened ecological communities that are known, likely to, or may occur within 10 km of the proposed action.
- 81) I also noted that, having regard to the EPBC Species and Ecological Communities Weekly Report, dated 13 September 2024, there were no recent or upcoming decisions relating to listed threatened species and communities, approved conservation advices, recovery plans or threat abatement plans that may be relevant to the referral.

82) Based on the location of the action, known or likely habitat present in the proposed action area, and species known or likely to be present, I agreed with the department's view that impacts potentially arise in relation to the following Part 3 protected matters.

***Threatened Ecological Communities***

**Tuart (*Eucalyptus gomphocephala*) Woodlands and Forests of the Swan Coastal Plain ecological community – Critically Endangered (Tuart TEC).**

***Protected matter ecology***

83) I noted and considered information on the characteristics, status and habitat requirements for Tuart TEC from the following:

- a) Approved Conservation Advice (incorporating listing advice) for the Tuart (*Eucalyptus gomphocephala*) woodlands and forests of the Swan Coastal Plain ecological community (2019), (hereby known as the Tuart TEC Approved Conservation Advice).

62) I noted and considered the following information on Tuart TEC from this advice:

- a) Tuart TEC occurs predominately on well-drained sandy soils, the ecological community is defined by the presence of at least two living established Tuart trees in the uppermost canopy.
- b) The Tuart TEC is distributed across the Swan Coastal Plain region in the Perth Basin of south-western WA.
- c) To qualify as a patch of Tuart TEC the vegetated area must meet size and quality criteria.

***Environment within and surrounding the proposed action area***

84) I noted that:

- a) The departments PMST report indicated that Tuart TEC is likely to occur within 2 km of the terrestrial project area.
- b) The Westport Last Mile Area Biological Survey states that a detailed and targeted flora and vegetation assessment was undertaken in line with all relevant Commonwealth and state policies, specifically the WA EPA Technical Guidance, Survey Guidelines for Australia's Threatened Orchids, and Tuart TEC Approved Conservation Advice.
- c) The Westport Last Mile Area Biological survey found five patches of Tuart TEC within 5 km of the terrestrial project area, in Good to Very Good condition based on the scientifically credible Keighery (1994) methodology. One patch is located partially within the terrestrial project area to the east, totalling 1.83 ha. This patch is supported by a nearby Resource Enhancement Wetland (UFI 6379) of 2.12 ha, approximately 40 m outside of the terrestrial project area, located to the northeast of the Rockingham Road and Anketell Road intersection.

***Potential impacts***

- 85) I noted that the Tuart TEC Approved Conservation Advice notes the primary threats to the ecological community are clearing and fragmentation of vegetation, invasive flora and fauna, dieback and pathogens, altered fire regimes, climate change, water extraction and loss of fauna supporting key ecological processes.
- 86) The department considered, and I agreed, that the proposed action will result in:
- a) A direct impact to Tuart TEC through the clearing of 0.7 ha of Tuart TEC from a larger 8.42 ha patch of 'good' or 'very good' condition.
  - b) A high potential for the spread of dieback within the proposed action area into the surrounding Tuart TEC patches given the common presence of dieback across the south-west of Western Australia and due to the high degree of disturbance and human activity associated with the construction of the proposed action. Dieback surveying and assessment has not been conducted for the proposed action area so its presence, although likely, is not confirmed.
- 87) I also noted that the proposed action may potentially degrade other surrounding Tuart TEC patches, specifically the smaller patch (1.03 ha) located on the eastern side of the impacted patch, through physical damage to the root zone of edge trees and other components of the ecological community from earthworks, water runoff and other damage.
- 88) I also noted the following:
- a) The referral states that the quantum of the impacts to the Tuart TEC will be confirmed through the assessment stage to inform the magnitude of significance. The department will seek this additional information during the assessment stage to clarify and confirm the amount and condition of Tuart TEC present within the terrestrial project area.
  - b) Dieback surveying and assessment has not been conducted for the proposed action area so its presence, although likely, is not known.
- 89) I accepted the department's advice that the impact, as described, was likely to be significant given the conservation status of the ecological community (critically endangered) and the regional context of the site. In doing so I noted:
- a) that the Swan Coastal Plain has been heavily impacted by urbanisation, with Tuart TEC being disproportionately affected by development. Given the high rate of Tuart TEC loss across its former range, the Tuart TEC Conservation Advice notes that all remaining remnant patches should be considered as contributing to the diversity, function and survival of the ecological community. Particularly in the Perth Metropolitan area, small patches may play an important role in retaining ecological connections (e.g. as 'stepping stones' between native vegetation and/or water).

***Avoidance, mitigation, and management measures***

- 90) I noted that the referral documentation refers to two avoidance measures having been considered during project design. These include:

- a) A revised and reduced project design to involve a smaller terrestrial footprint, to decrease the impact to MNES; and
  - b) A spatially reduced terrestrial project area to avoid areas supporting native vegetation however, given the nature of the proposed action and landside port facility infrastructure, impact avoidance opportunities were limited.
- 91) The department considered, and I agreed, that these measures will not sufficiently reduce the impacts to Tuart TEC to below significant as there remains a high potential that there will be direct and indirect impacts to Tuart TEC because of the proposed action which is likely to modify or significantly reduce the extent of the Critically Endangered ecological community.

***Precautionary principle***

- 92) The precautionary principle is that a lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage. I applied the precautionary principle in consideration of this matter, because I agreed with the department that the proponent had not provided information that would demonstrate that there are no likely significant impacts on Tuart TEC. The department provided the following reasons, and I agreed:
- a) The impacts of the proposed landside development are consistent with the threats to Tuart TEC discussed in the conservation advice, namely clearing and fragmentation of vegetation, and loss of fauna supporting key ecological processes.
  - b) There is substantial uncertainty concerning the impact to the greater patch of Tuart TEC outside of the development envelope, that is partially within the proposed action area.

***Conclusion***

- 93) In making my decision, I considered the nature of the proposed action, the precautionary principle, the referral documentation, relevant conservation advice and the EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance.
- 94) Taking into consideration that the proposed action will clear at least 0.7 ha of Good to Very Good condition Tuart TEC, and that there is uncertainty around the total magnitude of the impact to Tuart TEC within and surrounding the terrestrial project area, the department considered, and I agreed, that consistent with the EPBC Act Policy Statement 1.1 Significant Impact Guidelines - Matters of National Environmental Significance, the proposed action is likely to cause a substantial reduction in the quality or integrity of an occurrence of an ecological community.
- 95) Further, I noted the Critically Endangered status of Tuart TEC in conjunction with the high rate of loss across its range, and I decided that a significant impact to the Tuart TEC is likely to occur.

**Honeymyrtle shrubland on limestone ridges of the Swan Coastal Plain Bioregion (Honeymyrtle TEC)  
– Critically Endangered**



***Protected matter ecology***

96) I noted and considered the information on the characteristics, status, and habitat requirements for Honeymyrtle TEC from the following:

- a) Approved Conservation Advice for Honeymyrtle shrubland on limestone ridges of the Swan Coastal Plain Bioregion (hereby known as Honeymyrtle TEC Approved Conservation Advice).

97) I noted and considered the following information on Honeymyrtle TEC from this reference:

- a) Honeymyrtle TEC is the assemblage of species associated with a type of warm temperate shrubland or heath, dominated by *Melaleuca huegelii* (Chenille honey-myrtle), *M. systema* (Coastal honey-myrtle), and/or *Banksia sessilis* (Parrot bush). It is a shrub-dominated ecological community, with sclerophyll shrubs forming thickets or heaths, above a typically diverse ground layer of herbs.
- b) Honeymyrtle TEC occurs only in a small number of locations in Southwest WA on the Swan Coastal Plain, including within the City of Kwinana. There are 81 known occurrences of this TEC with the mean patch size of 1.3ha.
- c) Less than 200ha of the TEC remains, and as such, patches of Honeymyrtle TEC in any condition are protected as a MNES if they meet the key diagnostic characteristics and are at least 0.01 ha in size. The areas most critical to the survival of Honeymyrtle TEC are those that meet these requirements, and areas of native vegetation within 200m of the TEC.

***Environment within and surrounding the proposed action area***

98) I noted that:

- a) The PMST report generated by the department indicates that Honeymyrtle TEC may occur within 2km of the terrestrial project area.
- b) The supporting documentation was prepared by the proponent in August 2023 and November 2023, prior to the listing of Honeymyrtle TEC and the proponent did not conduct a desktop or targeted survey for Honeymyrtle TEC to rule out presence or define an impact. Consequently, there was a lack of information provided within the referral documentation on the occurrence of Honeymyrtle TEC within and surrounding the terrestrial project area.
- c) The Westport Last Mile Area Biological Survey provided by the proponent does however state Floristic Community Types (FCTs) identified within and surrounding the terrestrial project area, being FCTs 24, 25, 28, 29a, 30b. Honeymyrtle TEC is typically identified and mapped as FCT 26a, which did not occur within the proposed action area. However, the Honeymyrtle TEC Approved Conservation Advice states that whilst there may be areas described as different FCTs, the area may still meet the key diagnostic characteristics of Honeymyrtle TEC. I read that FCT 26a is closely related to FCT 25 and shows close similarities to FCT 24, both of which were identified within the terrestrial project area.

- d) The Honeymyrtle TEC Approved Conservation Advice states that vegetation units should be considered indicative of, rather than definitive as to whether the TEC is present or not, emphasising the importance of on-ground field surveys.

### ***Potential impacts***

99) The department considered, and I agreed with the following:

- a) The Honeymyrtle TEC Conservation Advice notes the primary threats to the ecological community are clearing and fragmentation of vegetation, invasive flora and fauna, dieback and pathogens, altered fire regimes, climate change, water extraction and loss of fauna supporting key ecological processes.
- b) Within the terrestrial project area, potential impacts may arise through direct clearing of Honeymyrtle TEC and/or disturbance of habitat critical to the survival of Honeymyrtle TEC (such as areas of native vegetation within 200m from a patch), from construction and operational activities. The removal or degradation of this habitat may also disturb ecological and genetic linkage and/or corridors between patches leading to a potential reduction in the ecological community.
- c) Additionally, the proposed action may potentially degrade other surrounding Honeymyrtle TEC patches yet to be identified.

### ***Avoidance, mitigation, and management measures***

100) I noted that although the referral documentation does not specify Honeymyrtle TEC, the avoidance measures described to minimise impacts to native vegetation clearing is relevant to Honeymyrtle TEC. These measures have been described above at paragraph 84.

101) I also noted that as the proponent has not surveyed for Honeymyrtle TEC, the avoidance measures at paragraph 84 cannot be confirmed as spatially relevant. The department considered, and I agreed, that the mitigation measures proposed are not specific enough to reduce potential impacts to Honeymyrtle TEC to below significant.

### ***Precautionary principle***

102) I applied the precautionary principle in consideration of this matter, because I agreed with the department that the proponent had not provided information that would demonstrate that there are no likely significant impacts on Honeymyrtle TEC. The department provided the following reasons, and I agreed:

- a) The impacts of the proposed landside development are consistent with the threats to Honeymyrtle TEC discussed in the conservation advice, namely clearing and fragmentation of vegetation, and loss of fauna supporting key ecological processes.
- b) There is substantial uncertainty concerning the occurrence, quantity and quality of Honeymyrtle TEC within the proposed action area.

## Conclusion

103) In making my decision, I considered the nature of the proposed action, the precautionary principle, the referral documentation, relevant conservation advice and the EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance.

104) The department considered, and I agreed, that due to the absence of information within the Westport Last Mile Area Biological Survey and referral documentation to determine the presence and extent of critically endangered Honeymyrtle TEC within the action area, the proposed action is likely to have a significant impact on any Honeymyrtle TEC present, because it cannot be actively avoided.

105) I noted that subject to my decision, the department would recommend seeking further information on the presence of this TEC within the terrestrial project area at the assessment stage.

## Birds

**Black cockatoos: Forest Red-tailed Black Cockatoo (FRTBC) (*Calyptorhynchus banksii naso*) – Vulnerable; Carnaby’s Black Cockatoo (CBC) (*Zanda latirostris* listed as *Calyptorhynchus latirostris*) – Endangered (Black Cockatoos)**

## Protected matter ecology

106) I noted and considered the information on the characteristics, status, and habitat requirements for the FRTBC and CBC from the following:

- Referral guideline for 3 WA threatened black cockatoo species (2022).
- Carnaby’s Cockatoo (*Calyptorhynchus latirostris*) Recovery Plan (2013).
- Approved Conservation Advice for *Calyptorhynchus banksii naso* (Forest Red-tailed Black Cockatoo) (2009).
- Commonwealth Listing Advice on *Calyptorhynchus banksii naso* (Forest Red-tailed Black Cockatoo) (2009).
- Forest Black Cockatoo (Baudin’s Cockatoo *Calyptorhynchus baudinii* and Forest Red-tailed Black Cockatoo *Calyptorhynchus banksii naso*) Recovery Plan (2008); and
- Survey guidelines for Australia’s threatened birds (2010).

107) I noted that while the Forest Black Cockatoo Recovery Plan (2008) was considered to have sunset from 1 October 2021, it was recently exempt from sunset which means that the department is required to consider this Recovery Plan until a new one is in force. Therefore, I gave consideration to the Forest Black Cockatoo Recovery Plan (2008).

108) From these references, I noted and considered the following information on CBC and FRTBC:

- a) CBC and FRTBC are long-lived, slow-breeding birds that are endemic to Western Australia. The species display strong pair bonds and probably mate for life. This is likely to exacerbate the effects of population decline and habitat loss and means that the species have a relatively low ability to recover from population declines.
- b) The overall population trends of FRTBC and CBC are declining and are expected to continue to decline. The main identified threat to black cockatoos is the loss and fragmentation of habitat because of the clearing of native vegetation. This includes the loss of nesting trees including hollows, nest hollow shortage and competition for available nest hollows, loss of foraging habitat and the fragmentation of breeding habitat from foraging resources. Other threats include mortality from vehicle strike, decline in tree health from pathogens (i.e. *Phytophthora cinnamomi*), illegal shooting, poaching and feral Honeybees (*Apis mellifera*).
- c) The term important population has not been defined for black cockatoos, due to the mobile and widely dispersed nature of these species, and the variation in flock compositions.
- d) That habitat critical to survival for FRTBC and CBC comprises:
  - i. All Marri (*Corymbia calophylla*), Karri (*Eucalyptus diversicolour*) and Jarrah (*Eucalyptus marginata*) forests, woodlands and remnants in the south-west of Western Australia receiving more than 600mm of annual average rainfall; and
  - ii. Any natural area where there is suitable vegetation for the black cockatoos to nest, feed or roost with nearby water sources, or any area occupied by the black cockatoo.
- e) FRTBC and CBC suitable feeding (foraging) habitat is defined by vegetation complexes or vegetation that provides food resources to Black Cockatoos, and nesting habitat is defined as areas of trees that contain suitable nesting hollows.
- f) Breeding varies between years and occurs at times of Jarrah and Marri fruiting. FRTBC and CBC breed in woodland or forest but may also breed in former woodland or forest that has been reduced to isolated trees.

***Environment within and surrounding the proposed action area***

109) I noted that:

- a) The PMST report generated by the department indicates that FRTBC and CBC are known to occur within 2km of the terrestrial project area and the Swan Coastal Plain, the location of the KIA, is a key region for BC during their non-breeding foraging season.
- b) The Westport Last Mile Area Biological Survey undertook a specific black cockatoo assessment in September 2023. The referral documentation states that no individuals or secondary evidence of any black cockatoo species were recorded within the proposed action area. However, I noted that given the mobile nature of the species, the presence or absence of birds is not a reliable indicator of habitat importance.

- c) Fauna habitats identified within and surrounding the terrestrial project area that are considered suitable habitat for FRTBC and CBC include *Acacia* shrubland, *Eucalyptus* Woodland/Forest, *Banksia* Woodland, and Jarrah/*Banksia* Woodland.

#### *Breeding*

110) I noted that the referral documentation indicated:

- a) No breeding activity for Black Cockatoos was recorded during surveys.
- b) The closest known breeding locations of Black Cockatoos is approximately 14 km from the terrestrial project area. FRTBC and CBC species have been recorded breeding in the Wungong Dam catchment, approximately 25km east.
- c) The action will not cause fragmentation of breeding habitat from foraging resources.

#### *Roosting*

111) I noted that:

- a) No known roost sites occur within the terrestrial project area, nor was there any evidence of roosting activity observed and the area does not intersect any permanent areas of fresh water.
- b) The proposed action area was deemed, by the proponent, to be unlikely to support night roosting habitat for CBC and FRTBC as these species prefer roosting locations in riparian areas, near permanent sources of fresh water.
- c) 23 roost sites occur within 12km north-east of the terrestrial project area, with the nearest roosting site 3.6km from the proposed action area according to the publicly available Department of Biodiversity, Conservation and Attractions (DBCA) Black Cockatoo Roosting Site dataset.

#### *Foraging*

112) I noted that the referral documentation stated the following:

- a) Based on the department's habitat quality scoring sheet, that the overall foraging value for black cockatoos within the survey area was negligible to low.
- b) Direct hectare values of foraging habitat to be cleared were not specified and these impacts would be informed when a final clearing footprint was determined in the assessment stage.

113) I noted that on 16 August 2024, the department sought further clarification on the foraging habitat area to be cleared by the proposed action. On 22 August 2024, the proponent provided revised information on foraging habitat to be impacted by the proposed action, advising that 1.59 ha of low-quality foraging habitat for FRTBC occurs within the terrestrial project area. It was also advised for CBC, that 4.76 ha of foraging habitat occurs within this area, comprising 2.31 ha of low quality, and 2.45 ha of low-moderate quality.

- 114) I noted that the proponent also stated that foraging habitat values excludes all 'negligible-low' quality habitat, which is mostly comprised of developed areas within the proposed action area. Habitat classified 'negligible-low' was described in the Westport Last Mile Area Biological Survey as containing known foraging plants with a projected foliage of under two percent. The department agrees with this habitat classification. The size of the area classed as 'negligible-low' foraging habitat was specified to cover 150.12 ha. The size of 'negligible-low' foraging habitat in the development envelope was not included in the Biological Survey.
- 115) I noted that due to the size of the 'negligible to low' foraging habitat area which largely covers the terrestrial development envelope of the proposed action, additional information will need to be sought by the department in the assessment stage to determine the size and value of foraging habitat to be cleared by the proposed action.
- 116) I noted that although CBC and FRTBC individuals were not recorded during the survey, they were deemed likely to occur within the terrestrial project area by the proponent's own Black Cockatoo assessment.
- 117) I noted that the proponent's Black Cockatoo assessment states that CBC and FRTBC are likely to use the terrestrial project area as a foraging site, and individuals are observed outside of this area travelling between the more extensive foraging areas of the locality.

### ***Potential impacts***

- 118) I noted the Black Cockatoo Referral Guideline (2022) states that the clearing of more than 1 ha of high-quality foraging habitat or clearing of more than or equal to 10 ha of low-quality foraging habitat risks having a significant impact upon black cockatoos. This is because Black Cockatoos rely on foraging resources to provide sufficient energy for breeding and to rebuild condition in the post-breeding period.
- 119) The department considered and I agreed that the proposed action will:
- a) Not cause fragmentation of breeding habitat from foraging resources.
  - b) Cause a loss of foraging habitat for the two species of Black Cockatoos.
- 120) The department considered, and I agreed, that the potential impacts of the proposed action on FRTBC and CBC may include, but may not be limited to, the following main threats to the species (also identified in the relevant Recovery Plans, Conservation Advice and Referral Guidelines):
- a) Loss of critical habitat:
    - i. Clearing of 1.59 ha of low-quality foraging habitat for FRTBC.
    - ii. Clearing of 4.76 ha of foraging habitat for CBC, compromising of 2.31 ha of low quality and 2.45 ha of low to moderate quality.
    - iii. Potential clearing of up to an additional 89 ha of low-negligible foraging habitat for FRTBC and CBC; and
    - iv. Mortality of fauna due to interaction with operational equipment such as vehicles.

- b) Other potential impacts include:
  - i. Injury and/or mortality of individuals by vehicle strike due to increased traffic during construction and operation.
  - ii. Localised disturbance due to increased noise, light, dust and vibration during construction and operation; and
  - iii. Behavioural changes in response to these new and threatening processes and the modifications to the habitat available (loss and degradation).

***Avoidance, mitigation, and management measures***

121) I noted that the proponent proposed several avoidance, mitigation and management measures to be implemented for the proposed action, including:

- a) Revising and reducing their project design to involve a smaller terrestrial footprint, to decrease the impact of vegetation clearing.
- b) Where possible, spatially limiting the terrestrial project area to avoid native vegetation and associated CBC and FRTBC habitat, and thus, in turn avoiding potential impacts of loss and fragmentation through clearing. Given the nature of the proposed action and landside port infrastructure, however, I noted that impact avoidance opportunities were limited.
- c) Implementation of a construction environmental management plan (**CEMP**) including pre-clearing fauna relocation actions, fauna spotting during construction activities, the application of construction site speed limits and (if applicable) the relocation of suitable habitats such as hollows.
- d) Utilisation of lighting that minimises impacts to fauna species through reduced spread and intensity; and
- e) Operational protocols around chance native fauna interactions as well as feral animal and weed control works.

***Conclusion***

122) In making my decision, I considered the nature of the proposed action, the referral documentation, relevant recovery plans, relevant conservation advice, relevant listing advice, relevant guidelines and the EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance.

123) The department considered, and I agreed, that the proposed measures are not sufficient in reducing the impacts to CBC and FRTBC below significant due to the known and uncertain extent of Black Cockatoo foraging habitat clearance. There is a real chance or possibility that the proposed action will reduce the area of occupancy of the species, destroy, remove, isolate or decrease the availability or quality of critical habitat to the extent that the species is likely to decline and interfere with the recovery of the species.

- 124) The department therefore considered, and I agreed, that the proposed action is likely to have a significant impact on the vulnerable FRTBC and endangered CBC.

#### **Other terrestrial listed threatened species and communities**

- 125) I noted that further information on other terrestrial listed threatened species (not mentioned above) was in the PMST report, which contained links to the department's Species Profile and Threats Database (SPRAT) containing relevant listing advice, conservation advice, recovery plans and threat abatement plans for each species. Further significant impact analysis by the department of these species was available to me in a PMST report summary spreadsheet, prepared by the department, with 2 km and 10 km buffer (**Excel Analysis**). The Excel Analysis provided a list of species that are likely, known or may occur within 2 km and 10 km of the proposed action area.
- 126) The department considered, and I agreed, that based on all the information available to the department (including the PMST report) and based on the nature, scale and location of the proposed action, the proposed action is likely to significantly impact on many of these terrestrial listed threatened species outlined in the Excel Analysis.
- 127) I noted that if I determined that the proposed action was a controlled action, the department would recommend requesting further information during the assessment stage in relation to the potential impacts on all of these species.

#### **Listed threatened species and communities (s18 and s18A) in the proposed marine action area**

##### ***Mammals***

##### **Southern Right Whale (*Eubalaena australis*) – Endangered**

##### ***Protected matter ecology***

- 128) I noted and considered the information on the characteristics, status, and habitat requirements for the Southern Right Whale from the following:
- National Recovery Plan for the Southern Right Whale (*Eubalaena australis*) (2024).
  - National Guidelines for the Survey of Cetaceans, Marine Turtles and the Dugong (2024).
  - Species group report card – cetaceans (2012).
  - Marine bioregional plan for the South-west Marine Region (2012).
- 129) From these references, I noted and considered the following information on the Southern Right Whale:
- a) Southern Right Whales are large baleen whales with two populations occurring in Australian waters: the Western and Eastern.
  - b) Cetaceans rely on sound for basic life functions such as communication for mating, navigation, foraging and predator avoidance. All species of Right Whales are known to produce a range of low frequency vocalisations, or bioacoustics, with most concentrated at



energies below 1 kHz. It is their dependence on sound for their success and survival that makes them so sensitive to anthropogenic noise which can affect the health and fitness of individuals and ultimately can have population level effects. Reports have shown that Right Whales increase the amplitude of their upcall in response to increasing background noise levels, and there is also evidence that ship noise can increase stress in Right Whales.

- c) The Southern Right Whale has a long-life span, low reproductive output, late sexual maturity and strong fidelity to calving areas, making them vulnerable to anthropogenic threats. These life history traits mean that any long-term response to disturbance and impacts from threats that may affect recovery are unlikely to be detectable, or even reliably identified to a specific threat, over short timescales (i.e., 1 to 3 years).
- d) Following severe depletion from historic commercial whaling which ended in 1978, recent estimates of the Southern Right Whale western population is approximately 3,200 individuals.
- e) Southern Right Whale in Australian waters predominantly aggregate in coastal reproductive areas where they calve and nurse their young from May to October (although they may occur as early as April and as late as November), primarily occupying shallow waters (<10 m depth) within 1 km of the coastline. Aggregations of Southern Right Whale show preferred breeding habitat to include shallow sloping sandy bottom bays that provide protection from the prevailing wind and weather.
- f) The Southern Right Whale is also a Listed migratory species.
- g) Primary threats to the Southern Right Whale relevant to the proposed action include:
  - i. Habitat degradation from coastal and offshore development.
  - ii. Anthropogenic underwater noise, and
  - iii. Vessel collision.

***Environment within and surrounding the proposed action area***

130) I noted that:

- a) The department's PMST report indicates that Southern Right Whale breeding is known to occur within 10 km of the development envelope.
- b) A desktop study provided by the proponent deemed the Southern Right Whale to have a 'medium' likelihood of occurrence within the marine project area and stated that the habitat within Cockburn Sound does not represent important habitat for the species.
- c) The marine project area is within a Biologically Important Area (**BIA**) for Southern Right Whale migration with migration activity occurring between April and October each year (approximately).

**Potential impacts**

131) The department considered, and I agreed, that the proposed project may cause the following potential direct and indirect impacts to Southern Right Whales, including physical and behavioural impacts, such as:

- a) Noise impacts during construction and operational activities. Cetaceans are sound centric particularly during vulnerable periods when undertaking critically important biological behaviour such as seasonal migration. Noise can affect the health and fitness of individuals including their reproductive potential over time by disrupting mating and ultimately having a negative population level effect;
- b) Increased vessel activity during the construction and operational phases of the proposed project, which may result in vessel strike;
- c) Dredging and the disturbance of the seabed during the construction phase has the potential to create long ranging sediment plumes that can affect benthic assemblages including prey species (plankton and crustaceans) targeted by Southern Right Whales, including displacement of these prey species from the whale's BIAs. Increased turbidity can also affect photosynthesis in algae, a critical component of the plankton and crustacean food chain, therefore disrupting food availability across the South-west Marine Region and potentially affecting Southern Right Whales;
- d) The potential for the release of contaminants into the ocean from both marine and terrestrial construction, including dredging and seabed disturbance, causing both immediate and long-term effect such as bioaccumulation of contaminants, putting longer lived species such as whales at greater risk of harm; and
- e) The increase of plastic waste and other marine debris during the construction and operational activities of the proposed action. Any amount of plastic ingestion can be fatal to whales as it physically damages their digestive system.

**Avoidance, mitigation, and management measures**

132) I noted that as the proposed action is in preliminary design stages, only general mitigation and avoidance measures for marine fauna had been proposed by the proponent at the referral stage, including:

- a) Avoiding known critical spatial and temporal windows of marine environmental sensitivity;
- b) Preliminary design of the offshore breakwater to avoid seagrass habitat that supports prey and foraging habitat for marine fauna;
- c) Preliminary design of the single entry/exit second main shipping channel with a turning basin for reduced dredging volumes and to avoid seagrass loss;
- d) Of the three design options, choosing the lowest in-situ dredge volume resulting in less overall dredging pressure on marine fauna and benthic habitats during the construction phase;

- e) The new second main shipping channel has large areas located within previously dredged areas, reducing the impact on undisturbed seagrass habitat. It is also designed to optimise natural depths to reduce dredge volumes and reduce the extent of impacts to marine fauna habitat;
  - f) Continuing and possibly increasing the State-wide Array Surveillance Program (SWASP) to ensure biosecurity threats are detected as soon as possible with measures in place to control and eradicate;
  - g) Design options for the offshore breakwater to minimise hydrodynamic impacts, and also to include fish habitat and Australian Sea Lion resting areas;
  - h) A proposed dredging management plan to cover dredging operations for the proposed action, including minimising the impacts of dredging to keep sediment concentrations to below critical thresholds;
  - i) Noise reduction through the selection of quieter construction methods such as vibration pilling and mechanical dredging (where possible);
  - j) Using dedicated marine fauna observers and the use of management (observation and exclusion) zones to avoid areas where noise levels could be potentially harmful to marine fauna; and
  - k) Rehabilitation of benthic communities to support marine fauna in the area.
- 133) The department considered, and I agreed, that these proposed mitigation measures are not sufficient to reduce the impacts to Southern Right Whales to below significant.
- 134) I noted that the proponent is undertaking further investigations in relation to the environmental impact of marine fauna and as such, the avoidance, mitigation and management measures will be updated and refined in the assessment phase.

#### ***Precautionary principle***

- 135) I applied the precautionary principle in consideration of this matter, because I agreed with the department that the proponent had not provided information that would demonstrate that there are no likely significant impacts on the Southern Right Whale. The department provided the following reasons, and I agreed:
- a) The impacts of the marine component of the proposed action are consistent with the threats to Southern Right Whales discussed in the conservation advice, namely habitat degradation, anthropogenic underwater noise, and vessel collision; and
  - b) There is substantial uncertainty concerning population dynamics of the species and use of habitat within the proposed action area.

#### ***Conclusion***

- 136) In making my decision, I considered the nature of the proposed action, the precautionary principle, the referral documentation, relevant recovery plans, relevant guidelines, the relevant

bioregional plan, relevant species report card and the EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance.

- 137) The department considered, and I agreed, that if the proposed avoidance and mitigation measures are implemented, the possibility that the proposed action will modify, destroy, remove, isolate or decrease the availability or quality of critical habitat to the extent that the species is likely to decline (as well as reduce the area of occupancy of the species) is still likely. Therefore, the proposed action is likely to have a significant impact on Southern Right Whales.

**Australian Sea Lion (*Neophoca cinerea*) - Endangered**  
***Protected matter ecology***

- 138) I noted and considered the information on the characteristics, status, and habitat requirements for the Australian Sea Lion from the following:

- Conservation Advice *Neophoca cinerea* Australian Sea Lion (2020).
- Recovery Plan for the Australian Sea Lion (*Neophoca cinerea*) (2013).
- Issues paper for the Australian Sea Lion (*Neophoca cinerea*) (2013).
- Threat Abatement Plan for the impacts of marine debris on the vertebrate wildlife of Australia's coasts and ocean (2018).
- Species group report card – pinnipeds (2012).
- Marine bioregional plan for the South-west Marine Region (2012).

- 139) From these references, I noted and considered the following information on the Australian Sea Lion:

- a) The Australian Sea Lion is slow to mature and is the only pinniped species which has a non-annual breeding cycle, with intervals between pupping seasons of 17-18 months.
- b) The maximum foraging range of juveniles and adult females are 118km and 190km respectively, while adult males range much further, up to 340km from their colony.
- c) The Australian Sea Lion is almost exclusively confined to the South-west Marine Region. The Australian Sea Lion is the only pinniped species endemic to Australia. Breeding colonies are found only in South Australian and Western Australian waters however, the species is known to forage in Commonwealth waters adjacent to these states.

- 140) I noted that the Marine Bioregional Plan for the South-west Marine Region (2012) states that any individual breeding colony should be regarded as an important population, and all attempts should be made to avoid BIAs for Australian Sea Lions, particularly waters surrounding breeding colonies and foraging areas used by female Australian Sea Lions.

***Environment within and surrounding the proposed action area***

- 141) I noted that:

- a) The PMST Report indicates that Australian Sea Lions are likely to occur within 2km of the development envelope.
- b) The marine project area is a BIA for foraging for the Australian Sea Lion.
- c) The referral indicates that the species is either known to occur or is concluded to have the potential to occur within the marine project area, and that the proposed action is likely to directly impact the Australian Sea Lion.
- d) The referral states that the marine project area is nearby to important haul-out areas at Garden Island with the species also known to use waters within Cockburn Sound and at Owen Anchorage and Gage Roads.
- e) The proponent is currently investigating the abundance, movement, habitat use and diet of Australian Sea Lion in the Perth metropolitan area and their findings will be requested by the department at the assessment stage.

### ***Potential impacts***

142) The department considered and I agreed, the potential direct and indirect impacts on the Australian Sea Lion may include, but may not be limited to, the following impacts and that these have been identified as the main threats to the species in the relevant recovery plans, conservation advice, bioregional plan, issues paper, and guidelines:

- a) Onshore and offshore development as part of the proposed action may degrade, and result in the loss of important coastal habitats due to modification of foraging habitat within a BIA for the Australian Sea Lion;
- b) Increased vessel movement may result in behavioural disturbance including displacement from, or abandonment of, haul out sites. It may also result in vessel strike causing injury or mortality. When the feeding of Australian Sea Lion pups is disrupted due to the mother fleeing, disturbance of breeding colonies may occur and be particularly detrimental, resulting in (for example) reduced pup growth rates;
- c) Increased noise from construction and dredging activities may cause avoidance behaviour, and/or hearing threshold changes as well as affecting prey species such as bony fish; and
- d) Sediment mobilisation from dredging activities potentially releasing historic contamination into the marine environment. This can directly impact on the health of the species via bioaccumulation (the Australian Sea Lion is an apex predator) or indirectly impact the species via impacts to prey species or foraging habitat.

### ***Avoidance, mitigation, and management measures***

143) I noted that general avoidance, mitigation and management measures for marine fauna, relevant to the Australian Sea Lion, have already been outlined above (see paragraph 125).

144) The department considered, and I agreed that the proposed mitigation measures are not sufficient to reduce the impact to the Australian Sea Lion to below significant.

***Precautionary principle***

145) The department considered and I agreed that the proponent has not provided information that would demonstrate that there are no likely significant impacts on the Australian Sea Lion. I therefore applied the precautionary principle for the following reasons:

- a) The department considered and I agreed that the impacts of the marine component of the proposed action are consistent with the threats to the Australian Sea Lion discussed in the conservation advice, namely habitat degradation, anthropogenic underwater noise, and behavioural disturbance from increased vessel movement; and
- b) The department considered and I agreed that there is substantial uncertainty concerning population dynamics of the species and use of habitat within the marine action area.

***Conclusion***

146) In making my decision, I considered the nature of the proposed action, the precautionary principle, the referral documentation, relevant conservation advice, relevant recovery plans, relevant issues papers, relevant threat abatement plans, the relevant bioregional plan, relevant species report card and the EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance.

147) The department considered and I agreed that if the proposed avoidance and mitigation measures are implemented, the possibility that the proposed action will modify, destroy, remove, isolate, or decrease the availability or quality of critical habitat to the extent that the species is likely to decline, as well as reduce the area of occupancy of the species, is still likely. Therefore, the proposed action is likely to have a significant impact on the endangered Australian Sea Lion.

***Reptiles***

**Marine Turtles: Loggerhead Turtle (*Caretta caretta*) – Endangered; Leatherback Turtle (*Dermochelys coriacea*) – Endangered; Green Turtle (*Chelonia mydas*) – Vulnerable; Flatback Turtle (*Natator depressus*) – Vulnerable**

***Protected matter ecology***

148) I noted and considered the information on the characteristics, status, and habitat requirements for the four listed marine turtles from the following:

- Recovery Plan for Marine Turtles in Australia (2017).
- Approved Conservation Advice for *Dermochelys coriacea* (Leatherback Turtle) (2008).
- Commonwealth Listing Advice on *Dermochelys coriacea* (2009).
- National Light Pollution Guidelines for Wildlife (2023).
- Species group report card - marine reptiles (2012).
- National Guidelines for the Survey of Cetaceans, Marine Turtles and the Dugong (2024).

- Marine bioregional plan for the South-west Marine Region (2012).

149) I noted the four species of marine turtle are also Listed Migratory species.

150) I noted that overall, the life history traits of marine turtles make them vulnerable to a wide range of anthropogenic threats. Life traits include late maturation, high natural mortality of hatchlings and small juveniles, strong fidelity to breeding areas, migrating over long distances and use of both terrestrial and marine environments to complete their life cycle.

151) I noted the threats to marine turtles in Australia includes marine debris, chemical and terrestrial discharge, terrestrial predation, light pollution, habitat modification, vessel disturbance/strike, noise interference, recreational activity and diseases and pathogens.

152) I noted that while these threats are considered in isolation, for most of the identified marine turtle populations, the cumulative impacts of multiple threats need to be addressed to secure their recovery.

#### *Loggerhead turtles*

153) I noted there are two genetically distinct stocks of Loggerhead turtles nesting in Australia, one in Queensland and one in Western Australia. Loggerhead turtles forage in all coastal states and the Northern Territory, but are uncommon in South Australia, Victoria and Tasmania. As post-hatchlings they are known to travel as far as South America.

#### *Leatherback turtles*

154) I noted genetic linkages are yet to be determined between areas where Leatherback turtles are known to nest or occur, and those found in Australian waters, however there are potentially three Leatherback turtle genetic stocks in the Indo-Pacific. Small numbers of Leatherback turtles nest on the Cobourg Peninsula and there have been unconfirmed accounts of Leatherback turtles nesting in Western Australia. Leatherback turtles are more commonly found foraging in Australian waters along the east coast and in Bass Strait, and the southern waters of Australia are one of five identified foraging sites where area restricted behaviour occurs. These turtles are likely from the Western Pacific genetic stock that nests in Northwest Papua, Northern Papua New Guinea, the Solomon Islands and Vanuatu. Leatherback turtles foraging off Western Australia may come from nesting areas in the Andaman Sea and there has been one tag recovery of a turtle that nested in Java.

#### *Green turtles*

155) I noted Green turtles nesting in Australia are distributed across nine genetically distinct stocks, predominantly found in Australian waters off the Northern Territory, Queensland and Western Australian coastlines, with more limited numbers in New South Wales, Victoria and South Australia. The population found in Western Australian waters is the North-west Shelf stock. There are also Green turtles that feed in Australia that are part of populations that breed in other countries.

*Flatback turtles*

156) I noted there are five genetically distinct stocks of Flatback turtles described around Australia known as the eastern Queensland, Arafura Sea, Cape Domett, South-west Kimberley and Pilbara stocks. Additional genetic analysis is being undertaken to provide better details of geographic boundaries for Flatback turtles in Western Australia. Flatback turtles forage across the Australian continental shelf and into the continental waters off Indonesia and Papua New Guinea.

***Environment within and surrounding the proposed action area***

157) I noted that:

- a) The PMST report indicates that foraging, feeding or related behaviour is known to occur within 2 km of the marine project area for the four listed marine turtles.
- b) The referral documentation indicates that the proposed action is not likely to directly or indirectly impact any of the four mentioned listed marine turtles.
- c) Specific genetic stocks of each of the four species of marine turtle have a known distribution within the marine project area.
- d) BIAs for marine turtles are areas where the species display biologically important behaviour such as breeding, foraging, resting and migration. No BIAs or Habitat Critical to Survival (HcTS) have been identified for these species within the marine project area however, the absence of a BIA designation does not preclude the area from being a BIA. The guidance is that where biologically important behaviour is identified as occurring, the habitat should be managed accordingly.
- e) Targeted surveying on the occurrence of the four marine turtles had not been conducted in the marine project area and surrounding areas.

158) I noted that subject to my decision, the department would recommend seeking further information in the assessment stage to determine presence, use and frequency of occurrence of the four marine turtles in the marine project area and surrounding areas.

***Potential impacts***

159) The department considered, and I agreed, the potential impacts of the proposed action on marine turtles may include, but may not be limited to the following, and that these are identified as main threats to the species in the relevant recovery plans, conservation advice, listing advice, bioregional plan:

- a) Vessel disturbance/strike is a key threat identified in the Recovery Plan for Marine Turtles in Australia (2017). Additional vessel traffic poses an increased risk of interactions to all nationally listed marine fauna, resulting in an increased risk of injury or mortality. Vessel traffic can also result in disruption to important behaviours such as feeding, nesting and migration;



- b) Light pollution from the introduction of artificial light from the proposed action impacting foraging behaviours and the orientation of marine turtles. The environment within and surrounding the marine action area (within 20 km), is a known BIA for marine turtles. Turtles have been observed to respond to artificial light up to 18 km away; and
- c) Sediment mobilisation from the proposed dredging activity releasing contaminants into the pelagic food chain from pollution deposited over time into the sediment.

### ***Avoidance, mitigation, and management measures***

- 160) I noted the general avoidance, mitigation and management measures for marine fauna, relevant to the marine turtles, as outlined above (see paragraph 125).
- 161) The department considered, and I agreed, that these proposed mitigation measures are not sufficient to reduce the impacts to the marine turtles to below significant.
- 162) I noted that should I determine that the proposed action is a controlled action, the department considered that further information would be required during the assessment stage regarding artificial light management for marine turtles.

### ***Precautionary principle***

- 163) I applied the precautionary principle in consideration of this matter, because I agreed with the department that the proponent had not provided information that would demonstrate that there are no likely significant impacts on the Loggerhead Turtle, Leatherback Turtle, Green Turtle and Flatback Turtle. The department provided the following reasons, and I agreed:
- a) The impacts of the marine component of the proposed action are consistent with the threats to the Loggerhead Turtle, Leatherback Turtle, Green Turtle and Flatback Turtle discussed in the conservation advice, namely ingestion of marine debris, habitat degradation and vessel collision; and
  - b) There is substantial uncertainty concerning population dynamics of the species and use of habitat within the proposed action area.

### ***Conclusion***

- 164) In making my decision, I considered the nature of the proposed action, the precautionary principle, the referral documentation, relevant recovery plan, conservation advice, listing advice, guidelines, relevant species report cards, the relevant bioregional plan and the EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance.
- 165) The department considered and I agreed, if the proposed avoidance and mitigation measures are implemented, that impacts to the critical habitat of Loggerhead turtles, Leatherback turtles, Green turtles and Flatback turtles are still likely. Therefore, I determined that the proposed action is likely to have a significant impact on Loggerhead turtles, Leatherback turtles, Green turtles and Flatback turtles.

### ***Sharks***

#### ***White Shark (*Carcharodon carcharias*) – Vulnerable***

***Protected matter ecology***

166) I noted and considered the information on the characteristics, status and habitat requirements for the White Shark from the following:

- Recovery Plan for the White Shark (*Carcharodon carcharias*) (2013).
- Species group report card – sharks (2012).
- Marine bioregional plan for the South-west Marine Region (2012).

167) I noted and considered the following regarding the White Shark:

- a) The White Shark is also a Listed Migratory species.
- b) White Sharks live for 30 years or more and are found throughout temperate and sub-tropical regions in the northern and southern hemispheres. They are a widely dispersed, low density, highly mobile apex predator.
- c) In Australia, the White Shark has a range extending from central Queensland, around the southern coastline, and up to the Northwest Cape in Western Australia. The White Shark is primarily an inhabitant of the continental and insular shelf waters but is also known to inhabit the open ocean. It often occurs close inshore near the surf-line and may move into shallow bays.
- d) White Sharks are commonly found in inshore waters in the vicinity of islands and often near seal colonies, including the Recherche Archipelago and the islands off the lower west coast of Western Australia.
- e) The Marine bioregional plan for the South-west Marine Region has identified the White Shark as a regional priority on the basis of their unique association within the region and the habitats.
- f) There is historical evidence of a decline in White Shark numbers Australia-wide over the last 60 years, and no evidence to suggest that White Shark numbers have recovered substantially since receiving protection.

168) I noted critical habitat to the survival of the White Shark includes any identified foraging areas, aggregation areas, and sites to which White Sharks return on a regular basis. Habitat critical to the survival of White Sharks is also identified as high-density foraging sites, mostly around seal and sea lion colonies.

169) I noted potential threats to White Sharks in Australia include ecosystem effects due to habitat modification and climate change, including changes in sea temperature, ocean currents and acidification.

***Environment within and surrounding the proposed action area***

170) I noted that:

- a) The PMST report indicates that White Sharks are known to occur within 2 km of the development envelope.
- b) The referral document states that multiple tagged White sharks have previously been detected within Cockburn Sound, and as such it is very likely that the species would be present in the marine project area. It is also stated that high abundances of sharks in the region coincide with the seasonal formation of spawning aggregations of snapper.
- c) According to the Recovery Plan for the White Shark (*Carcharodon carcharias*), the White Shark has a known distribution within the marine action area.

### ***Potential impacts***

171) The department considered, and I agreed, that potential direct and indirect impacts to White Sharks arising from the proposed action include:

- a) Vessel strike during construction and operation phases leading to injury or mortality;
- b) Entrainment of marine fauna by dredge;
- c) Loss of marine fauna habitat due to direct removal or disturbance of benthic habitat from construction activities, including dredging;
- d) Increases in turbidity from dredging and reclamation impacting on foraging and other behaviour;
- e) Increases in turbidity from vessel movements impacting on foraging and other behaviour; and
- f) Threats to biosecurity due to the introduction of marine pest species from operational vessels.

172) I noted the referral indicates that direct impacts to White Sharks from the proposed action are likely.

### ***Avoidance, mitigation, and management measures***

173) I noted the general avoidance, mitigation and management measures for marine fauna, relevant to the White Sharks, as outlined above (see paragraph 125).

174) The department considered and I agreed that the proposed measures are not sufficient in reducing the impacts to the White Shark to below significant.

### ***Precautionary principle***

175) I applied the precautionary principle in consideration of this matter, because I agreed with the department that the proponent had not provided information that would demonstrate that there are no likely significant impacts on the White Shark. The department provided the following reasons, and I agreed:

- c) The impacts of the marine component of the proposed action are consistent with the threats to the White Shark discussed in the conservation advice, namely habitat modification and behavioural disturbance from increased vessel movement; and
- d) There is substantial uncertainty concerning population dynamics of the species and use of habitat within the proposed action area.

### **Conclusion**

- 176) In making my decision, I considered the nature of the proposed action, the precautionary principle, the referral documentation, relevant recovery plans, relevant species group report card, relevant bioregional plan and the EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance.
- 177) The department considered, and I agreed, that if the proposed avoidance and mitigation measures are implemented, the possibility that the proposed action will modify, destroy, remove or isolate, or decrease the availability or quality of critical White Shark habitat, to the extent that the species is likely to decline, is still likely. Therefore, the proposed action is likely to have a significant impact on the vulnerable White Shark.

### **Other marine listed threatened species and communities**

- 178) I noted the PMST report dated 16 September 2024 identified 106 additional marine listed threatened species that are known, likely to, or which may occur within the marine project area and may traverse the site or be disturbed or adversely impacted by construction and operation of the proposed action within 10 km of the marine project area.
- 179) I noted the EPBC Act Species and Ecological Communities Report, dated 13 September 2024, indicates that there were no recent or upcoming decisions relating to species and communities, approved conservation advice, recovery plans or threat abatement plans that may be of relevance to this proposed action.
- 180) I considered that further information on other marine listed threatened species not mentioned above were found in the PMST report, which contains links to the department's Species Profile and Threats Database (SPRAT) that states relevant listing advice, conservation advice, recovery plans and threat abatement plans for the species. I noted and considered the further significant impact analysis that was conducted by the department of these species within the Excel Analysis.
- 181) Based on all the information available, including the PMST report and based on the nature, scale and location of the proposed action, the department considered, and I agreed, that the proposed action is likely to significantly impact on many marine listed threatened species.
- 182) I noted that subject to my decision, the department would recommend seeking further information in the assessment stage in relation to the potential impacts on marine listed threatened species.

### **Conclusion on listed threatened species and communities (s18 and s18A)**

183) For the reasons discussed above (in paragraphs 77 to 174), the department considered, and I agreed that sections 18 and 18A are controlling provisions for the proposed action.

**Listed migratory species (s20 and s20A)**

184) I noted that in addition to the migratory species identified under 'listed threatened species and communities', the department's PMST report dated 16 September 2024 identified an additional 69 listed migratory species that were known, likely to or may occur, within 10 km of the proposed action.

185) I noted that the department also consulted the EPBC Act Species and Ecological Communities Weekly Report dated 13 September 2024 to check for recent or upcoming decisions related to listed migratory species, approved conservation advice, recovery plans, or threat abatement plans that may be of relevance to this proposal.

186) I noted a decision by the Minister was approved on 11 September 2024 to list the Grey Nurse Shark (*Carcharias taurus*) as Migratory for WA. The Grey Nurse Shark had therefore been included as a MNES triggered for the proposed action.

187) Based on the location and scope of the proposed action, known or likely habitat present in the proposed action area and species known or likely present, the department considered, and I agreed, that impacts potentially arise in relation to the following Part 3 protected matters.

***Migratory birds***

***Protected matter ecology***

188) I noted and considered the information on the characteristics, status and habitat requirements for migratory birds from the following:

- EPBC Act Policy Statement 3.21: Industry guidelines for avoiding, assessing and mitigating impacts on EPBC Act listed migratory shorebird species (2017).
- Wildlife Conservation Plan for Migratory Shorebirds (2015).
- Species group report card – seabirds (2012).
- Marine bioregional plan for the South-west Marine Region (2012).

189) I noted that the department organised its recommendations about listed migratory birds in one section in the advice to me because there is considerable overlap in the habitats that each of the species are found in, or are likely to occur in, within the development envelope, and as such the direct and indirect impacts that potentially occur due to the proposed action are similar.

190) I noted that Migratory shorebird habitat is described as nationally important if it regularly supports 0.1 per cent of the flyway population of a single species of migratory shorebird or 2000 migratory shorebirds or 15 migratory shorebird species.

191) I noted that Migratory shorebirds migrate through Australia to forage and to build reserves for their yearly flights back to the Northern Hemisphere.

192) I noted all the migratory seabird species considered for this decision are protected under the Japan-Australia Migratory Bird Agreement (JAMBA), China-Australia Migratory Bird Agreement (CAMBA), Republic of Korea-Australia Migratory Bird Agreement (ROKAMBA), or Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention). Some conservation significant species are discussed below.

#### *Caspian Tern*

193) I noted the following regarding the Caspian Tern (*Hydroprogne caspia*):

- a) Caspian Tern is the largest tern in Australia and has long, slender backswept wings and a slightly forked tail. The Caspian Tern is mostly found in sheltered coastal embayments (harbours, lagoons, inlets, bays, estuaries and river deltas) and those with sandy or muddy margins are preferred. The Caspian Tern usually forages in open wetlands, including lakes and rivers. They often prefer sheltered shallow water near the margins but can also be found in open coastal waters.
- b) The species is at risk from a range of threats including habitat loss or degradation through the introduction of exotic plant species, human disturbance and trampling by cattle at breeding sites, entanglement of young birds with fishing line and nets and exposure to and bioaccumulation of contaminants.

#### *Bridled Tern*

194) I noted the following regarding the Bridled Tern (*Onychoprion anaethetus*):

- a) The Bridled Tern is a migratory seabird that inhabits warm tropical waters worldwide, breeding on islands, including vegetated coral bays, rocky continental islands and rock stacks. Bridled Terns are only rarely found in inshore continental waters and along mainland coastlines as they spend a significant portion of their lives far offshore and are rarely seen near land except when blown off course or to breed. The Bridled Tern breeds on offshore islands along the WA coast (Penguin Island, Lancelin Island, Houtman Abrolhos, Lowendal Island, and Ashmore Reef) with breeding seasons varying geographically. In WA, breeding mainly occurs in the Australian spring-summer. In WA, most colonies return to their breeding grounds between late September to October and normally depart in April.
- b) The total population in Western Australia is estimated to be at least 30,000 to 40,000 pairs and increasing. In Australia, the species has markedly extended its range southwards in recent years. In Western Australia, it was not recorded breeding south of the Houtman Abrolhos in 1843, but a few nests were noted on islets off Rottnest Island in 1889. The greatest threat to the Bridled Tern is human disturbance causing adults to abandon nests.

#### *Common Sandpiper*

195) I noted the following regarding the Common Sandpiper (*Actitis hypoleucos*):

- a) The Common Sandpiper is found along all coastlines of Australia and in many areas inland, the Common Sandpiper is widespread in small numbers. The Common Sandpiper has been recorded in estuaries and deltas of streams, as well as on banks farther upstream; around

lakes, pools, billabongs, reservoirs, dams and claypans, and occasionally piers and jetties. The species is often associated with mangroves and sometimes found in areas of mud littered with rocks or snags. Generally, the species forages in shallow water and on bare soft mud on the edges of wetlands; often where obstacles project from the substrate, e.g. rocks or mangrove roots.

- b) Roost sites are typically on rocks or in roots or branches of vegetation, especially mangroves. The Common Sandpiper breeds in Eurasia and moves south for the boreal winter, with most of the western breeding populations wintering in Africa, and the eastern breeding populations wintering in south Asia to Melanesia and Australia. Within Australia, individuals often occur in the north in June-August. The main threat to the Common Sandpiper is human activity which is currently causing population decline due to habitat loss and changes, pollution and pesticides use.

***Environment within and surrounding the proposed action area***

196) I noted two migratory species were not identified in the departments PMST report but have been recognised by the proponent as potentially occurring in the proposed action area, these species are:

- Gull-billed Tern (*Gelochelidon nilotica* as *Sterna nilotica*).
- Common Tern (*Sterna hirundo*).

197) I noted the Westport Last Mile Area Biological Survey identified 15 migratory bird species as likely to occur within 10 km. Three targeted surveys were undertaken by the proponent, first in November 2023 followed by surveys in January and February of 2024.

198) I noted the following migratory species were recorded in the survey area across all survey phases (basic/targeted survey, and all three targeted shorebird surveys):

- Red Knot, *Calidris canutus* (Vulnerable and Marine).
- Australian Gull-billed Tern, *Gelochelidon nilotica macrotarsa* listed at species level as *Gelochelidon nilotica* (Marine as *Sterna nilotica*).
- Bridled Tern, *Onychoprion anaethetus* (Marine).
- Caspian Tern, *Hydroprogne caspia* (Marine).
- Common Sandpiper, *Actitis hypoleucos* (Marine).
- Greater Crested Tern, *Thalasseus bergii* (Marine).
- Osprey, *Pandion haliaetus* (Marine).
- Sanderling, *Calidris alba* (Marine).

199) I noted and accepted the department's advice that with known areas in the locality supporting high numbers of migratory birds, and these species being highly mobile, it is possible the survey area may occasionally support large numbers of migratory birds.

**Potential impacts**

- 200) The department considered, and I agreed, that potential direct and indirect impacts to migratory shorebirds from the proposed action include:
- a) Disturbance due to increased human activity and urban growth, such as vibration, rubbish accumulation and noise which may disturb feeding ecology;
  - b) Dredging and the disturbance of the seabed during construction which has the potential to create sediment plumes that affect benthic assemblages including fish species utilised by migratory species, impacting foraging and species life cycles;
  - c) Increased turbidity can also affect photosynthesis in algae, a critical component of krill, therefore further disrupting the foraging availability for migratory birds;
  - d) Contaminant bioaccumulation in the food chain through dredging, negatively affecting breeding success and the survival of migratory species;
  - e) Increased vessel movement arising from the proposed action may adversely impact migratory seabirds including direct mortality through vessel strike substantially altering migratory pathways and interfering with BIAs like foraging;
  - f) Modification or destruction of important habitat through construction; and
  - g) Artificial light impacts which can disorient flying birds, affect their stopover selection and disrupting their foraging. Thereby hindering their ability to prepare for breeding or migration.

**Avoidance, mitigation, and management measures**

- 201) I noted that general avoidance, mitigation and management measures for marine fauna, relevant to the migratory seabirds had been outlined in the advice to me and that these measures are outlined above (see paragraph 125).

**Precautionary principle**

- 202) The department considered and I agreed that the proponent has not provided information that would demonstrate that there are no likely significant impacts on migratory bird species. I therefore applied the precautionary principle for the following reasons:
- a) The department considered and I agreed that the impacts of the proposed construction and operational activities are consistent with the threats to migratory birds discussed in the Wildlife Conservation Plan for Migratory Shorebirds (2015), namely habitat loss and modification and anthropogenic disturbance.
  - b) The department considered and I agreed that there is substantial uncertainty concerning the biology, ecology, population numbers, population dynamics and presence and use of habitat by migratory species within the proposed action area.



## Conclusion

203) In making my decision, I considered the nature of the proposed action, the precautionary principle, the referral documentation, EPBC Act Policy Statement 3.21, Wildlife Conservation Plan for Migratory Shorebirds and the EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance.

204) The department considered, and I agreed, that if the proposed avoidance and mitigation measures are implemented, the possibility to modify, destroy or isolate critical habitat for migratory species and/or disrupt the lifecycle (breeding, feeding, migration or resting behaviour) of a significant proportion of the population of migratory species are still likely. Therefore, the proposed action is likely to have a significant impact on migratory birds.

## Cetaceans

### ***Humpback Whale (Megaptera novaeangliae) and Southern Right Whale (Eubalaena australis as Balaena glacialis australis)***

205) I noted the advice provided to me on the Southern Right Whale in relation to Listed Threatened Species and Communities in the proposed marine action area (paragraphs 121 to 128 above). I noted that this species of cetacean shares similar protected matter ecology, the same environment within and surrounding the proposed marine action area and similar potential impacts, avoidance, mitigation and management measures, as the other Listed migratory cetaceans (Bottlenose Dolphin (*Tursiops truncatus*), Common Dolphin (*Delphinus delphis*), Indian Ocean Bottlenose Dolphin (*Tursiops aduncus*), Minke Whale (*Balaenoptera acutorostrata*), Pygmy Blue Whale (*Balaenoptera musculus breviceauda*) listed at species level as Blue Whale (*Balaenoptera musculus*), Risso's Dolphin (*Grampus griseus*) and Spotted Dolphin (*Stenella attenuata*). For this reason, the department considered, and I agreed, that the proposed action is also likely to have a significant impact on all Listed migratory cetaceans occurring within the marine action area.

206) The department considered, and I agreed, that if the proposed avoidance and mitigation measures are implemented, the possibility that the proposed action will modify, destroy, remove, isolate or decrease the availability or quality of critical habitat to the extent that the species is likely to decline, as well as reduce the area of occupancy of the species, was still likely. Therefore, I considered the proposed action likely to have a significant impact on migratory cetaceans.

## Sharks and rays

### ***White Shark (Carcharodon carcharias), Grey Nurse Shark (Carcharias taurus) (west coast population), Mackerel Shark (Lamna nasus), Oceanic Whitetip Shark (Carcharhinus longimanus), Reef Manta Ray (Mobula alfredi as Manta alfredi) and Whale Shark (Rhincodon typus)***

207) I noted the advice provided to me (as outlined above) that the White Shark was likely to be subject to significant impacts from the proposed action (see paragraphs 159 to 168). I noted that this species shares similar protected matter ecology, the same environment within and surrounding the proposed action area and similar potential impacts, avoidance, mitigation and management measures as the other 5 Listed migratory sharks and rays and were therefore

grouped together in my consideration. For this reason, the department considered, and I agreed that the proposed action will likely have a significant impact on all Listed migratory shark and ray species.

- 208) The department considered, and I agreed, even if the proposed avoidance and mitigation measures are implemented, the possibility that the proposed action will modify, destroy, remove, isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline, as well as reduce the area of occupancy of the species, is still likely. Therefore, the proposed action is likely to have a significant impact on migratory sharks and rays.

***Marine turtles***

***Loggerhead Turtle (Caretta caretta) – Endangered; Leatherback Turtle (Dermochelys coriacea) – Endangered; Green Turtle (Chelonia mydas) – Vulnerable; Flatback Turtle (Natator depressus) – Vulnerable***

- 209) I considered and adopted the recommendations and conclusions with respect to migratory marine turtles as discussed above at paragraphs 141 to 156.

***Other listed migratory species***

- 210) I noted the PMST report dated 16 September 2024 identified several additional listed migratory species that are known, likely to or may occur, within the proposed action area and may traverse the site or be disturbed or adversely impacted by construction and operation of the proposed action within 10 km of the action area.
- 211) I consulted the EPBC Act Species and Ecological Communities Report, dated 13 September 2024, relating to species and communities, approved conservation advice, recovery plans or threat abatement plans that may be of relevance to this proposed action.
- 212) I noted that a decision by the Minister on 11 September 2024 to list the Grey Nurse Shark (*Carcharias taurus*) as Migratory for WA. This listing decision came into effect on 21 September 2024. I noted that the Grey Nurse Shark has been included as a Listed migratory species.
- 213) Further information on other Listed migratory species was available to me in the department's PMST report which contained links to the Department's Species Profile and Threats Database (SPRAT) which provides relevant Listing advice, conservation advice, recovery plans and threat abatement plans for Listed migratory species. I noted and considered further significant impact analysis by the department on each of these species within the Excel Analysis.
- 214) On the basis of all the information available to me (including the PMST report, which suggests the presence of the listed migratory species in the project area) and based on the nature, scale and location of the proposed action, the department considered, and I agreed that the proposed action is likely to significantly impact many listed migratory species.
- 215) I noted that should I determine that the proposed action is a controlled action, the department considered that further information will be required during the assessment stage in relation to the potential impacts on these listed migratory species.

**Commonwealth marine area (s23 and s24A)**

**Description**

- 216) 'Commonwealth marine area' is defined in section 24 of the EPBC Act as any part of the waters inside the seaward boundary of Australia's Exclusive Economic Zone and any waters over the continental shelf of Australia, including the seabed under, and any airspace over those waters, that is not within the limits of a state or the Northern Territory.
- 217) I noted the proposed action is located within state-controlled Coastal Waters; however, it is approximately 5 km from the Commonwealth-controlled waters boundary. The northern most ~0.5 km of the second main shipping channel extends into the Territorial Sea; however, this portion of the Territorial Sea is still located within Coastal Waters, so it remains as state-controlled waters.
- 218) I noted the referral documentation correctly stated that the proposed action is not being taken within a Commonwealth marine area, however, the EPBC Act, Marine bioregional plan for the South-west Marine Region and the Significant Impact Guidelines 1.1 state that an action requires approval if it is taken outside of a Commonwealth marine area but within Australian jurisdiction and the action has, will have, or is likely to have a significant impact on the environment and values within a Commonwealth Marine area.

**Natural values**

- 219) I noted the Commonwealth Marine area adjacent to the marine project area is known as the South-West Marine Bioregion.
- 220) I noted the South-west Marine Bioregion begins at the boundary of Commonwealth and state waters. The South-west Bioregion is an area of global significance as a breeding and feeding ground for protected marine species. The Marine bioregional plan for the South-west Marine Region (2012) outlines the specific values of the region, defining Key Ecological Features (KEFs) and BIAs.
- 221) I noted the PMST report also indicates that 78 listed marine species, and 12 whales and other cetaceans (including the 2 species previously included as Listed threatened or migratory) are known, likely to, or may occur within 10 km of the proposed action area which includes the area within the Commonwealth marine area.
- 222) I noted cetaceans that occur within the South-west Marine Region are protected under the EPBC Act by virtue of the Australian Whale Sanctuary.
- 223) I noted the proposed action area contains BIAs that contribute to the natural values of the marine network including:
- a) Migration areas: Southern Right Whale and Humpback Whale; and
  - b) Foraging areas: Australian Sea Lion, Little Penguin, Bridled Tern, Caspian Tern, Fairy Tern, Little Shearwater, Pacific Gull, Roseate Tern and Wedge-tailed Shearwater.
- 224) I noted that BIAs outside of, but occurring within 10 km of, the proposed action area, include aggregations of Flesh-footed Shearwater, and foraging areas for Soft-plumaged Petrel.

- 225) I noted and accepted the department's advice that given the presence of BIAs, all the above species are not assumed to be absent based on a lack of previous sightings. Species-specific surveys are required to identify species at risk, including their migratory routes, the altitude of different bird species, and the seasonal variability of migratory species.
- 226) I noted that no areas of HCtS were identified within 10 km of the proposed action area.
- 227) I noted the below information regarding the Little Penguin:
- a) Little Penguin population breeding in the Perth region is the largest in Western Australia. The Marine bioregional plan for the South-west Marine Region published in 2012 stated that the colony is made up of about 700 pairs and is geographically isolated from the south coast populations. This population estimate is likely to be outdated as recent published literature in 2022 indicates the number of breeding penguins on Garden Island to be estimated at 140 to 160 breeding pairs in 2015, with 500 to 600 individuals in total.
  - b) The colony present at Garden Island is considered an important population and has been found to forage exclusively within Cockburn Sound during both the incubation and chick-guard phase. Breeding penguins from the nearby Penguin Island colony have also been found to typically forage within Cockburn Sound during the incubation period, a population that is already under stress with the Penguin Island colony seeing a 94% decline since 2008. Additional impacts from the proposed action to a population already under stress, the Penguin Island colony, could be detrimental to its viability. An article prepared by the WAMSI Westport Marine Science Program for the proposed action states the Little Penguin is likely to be considerably impacted by increased boat traffic, developments and water turbidity as a result of the proposed action.
  - c) Species specific impacts from the proposed action for the Little Penguin include loss of prey nursery (whitebait) habitat, chemical pollution resulting from proposed dredging activities releasing heavy metals into the pelagic food chain, and collision with vessels.
- 228) I noted the Marine bioregional plan for the South-west Marine Region (2012) and the Australian Marine Spatial Information System (AMSIS) database notes the following KEFs within 10 km of the proposed action area:
- a) *Western Rock Lobster* play an important ecological role as a major benthic predator species in the deeper communities off the west coast continental shelf; and
  - b) *Commonwealth marine environment within and adjacent to the west coast inshore lagoons*, which is a regionally important feature for enhanced benthic productivity and for aggregations of marine life.

### **Potential impacts**

- 229) I noted that as the proposed action is a port development there is expected to be associated with an increase in vessel movement through the South-west Marine Region when in operation, as well as increased vessel movement during construction activities. With increased vessel movement comes increased risk of injury and/or mortality from vessel strike to marine fauna.

Vessel strike is of particularly high concern for air-breathing species as they spend prolonged periods of time at the water's surface, including marine turtles, whales, Australian Sea Lion, and the Little Penguin. An increased rate of vessel strike may lead to reduced occupancy within the area or long-term population decrease of a species which contributes to the natural value of the South-west Marine Region.

230) I noted and accepted the department's advice that the proposed action is also likely to result in increased underwater noise, as well as high cumulative sound exposure risk within the proposed action area and surrounds during construction and operational activities. I noted and agreed that potential impacts to marine fauna from underwater noise are widespread, and may include:

- a) Permanent Threshold Shift - a permanent reduction in the sensitivity of hearing or irreversible hearing loss;
- b) Temporary Threshold Shift - a temporary hearing loss following exposure to high level of noise, reducing individuals' communication ability to detect prey or predators, or assess their environment;
- c) Behavioural changes including change in swimming speed and direction, diving frequency and duration, communication, foraging, mating, resting, socialising and defensive behaviours;
- d) Underwater noise of the proposed action may contribute to masking of the signal emitted by marine species, disrupting communication between animals, or the ability to sense predators; and
- e) Prolonged and repeated stress responses negatively impacting marine fauna including, hormonal, autonomic, immune and behavioural responses.

231) I noted that underwater noise modelling has not yet been conducted within Cockburn Sound, although I also noted that acoustic monitoring is currently underway by the proponent.

232) I noted and accepted the department's advice that the proposed action is likely to result in increased light pollution due to construction and operation activities and that an assessment of the impacts of light pollution from the proposed action has not been undertaken by the proponent. I noted potential significant impacts may include:

- a) Changes to light availability and natural light cycles altering important lifecycle events such as reproductive events;
- b) Alteration and suppression of the daily vertical migration of zooplankton, which rise to the surface at night to feed on phytoplankton; and
- c) Direct impacts on the navigation, movement and behaviour of marine fauna, reflecting species-specific innate attraction or repulsion to lighting.

233) I noted the above-mentioned impacts have cascading implications on community food webs, nutrient flows and cycling, and overall population abundance and species diversity.

234) I noted and accepted the department's advice that potential impacts on the Commonwealth marine environment from the proposed total capital dredging of approximately 35 million cubic metres include:

- a) Physical collision of the dredge material with marine fauna, resulting in injury and/or mortality;
- b) Increased turbidity - Concentrations in suspended matter and increased rates in sedimentation may cause temporary decreases in water transparency and a reduction in light penetration, leading to sub-lethal effects or death of light sensitive organisms and habitats;
- c) Reduced vitality or death of sessile benthic fauna through clogging of feeding mechanisms, burial or smothering by suspended sediment;
- d) Changes to bathymetry leading to alteration of current velocities and wave conditions affecting sediment regimes and leading to erosion of areas, such as seagrass beds;
- e) A reduction in dissolved oxygen levels due to an increase in nutrient concentrations potentially resulting in anoxia/hypoxia;
- f) Physical habitat modification through dredging or installation activities;
- g) Flow-on effects of bioavailable sediment contaminants and toxics such as persistent organic chemicals, heavy metals, or other potentially harmful chemicals, within the sediment to be dredged and becoming released into the Commonwealth marine environment; and
- h) Introduction of disease or marine pests from increased vessel traffic, that may have the potential to expand into deeper waters, including in the offshore Commonwealth marine environment. Currently, Cockburn Sound has 46 introduced marine species with four of these considered pests:
  - i. Asian date mussel/bag (*Arcuatula senhousia*),
  - ii. European fanworm (*Sabella spallanzanii*),
  - iii. Colonial ascidian (*Didemnum pellucidum*); and
  - iv. Toxic dinoflagellate (*Alexandrium catanella*).

235) I noted the highly invasive carpet sea squirt (*Didemnum vexillum*) was also recorded at Garden Island for the first time in 2023, so there is the potential for the invasion of this species to be exacerbated as a result of the proposed action.

236) I considered cumulative impacts related to dredging, including consideration of other dredging and/or disposal practices in the area including historical, existing and planned maintenance disposals. I noted the current and ongoing Defence activities within the WA training exercise area offshore of Perth, near Garden Island, which could contribute to cumulative impacts in the region.

237) I accepted the department's advice that because of these impacts there is a possibility that the proposed action will:

- a) Modify, destroy, fragment, isolate or disturb an important or substantial area of habitat such that there will be an adverse impact on marine ecosystem functioning or integrity in a Commonwealth marine area;
- b) Have a substantial adverse effect on a population of a marine species or cetacean, including its lifecycle (e.g. breeding, feeding, migration behaviour or life expectancy) and spatial distribution;
- c) Result in a substantial change in water quality which may adversely impact on biodiversity, ecological integrity, social amenity or human health; and
- d) Result in persistent organic chemicals, heavy metals, or other potentially harmful chemicals accumulating in the marine environment, such that biodiversity, ecological integrity, social amenity or human health may be adversely affected.

238) I noted and agreed with the department's advice that given the information contained in the referral documentation, the nature and scale of the proposed action and its potential impacts, and the proximity to a Commonwealth marine area, the proposed action is likely to have a significant impact on the environmental values in a Commonwealth marine area.

239) For these reasons the department considered, and I agreed that sections 23 and 24A are controlling provisions for the proposed action.

#### ***Commonwealth marine parks***

240) I noted there are no marine parks within Commonwealth waters intersecting or adjacent to the proposed action area. The closest marine park is the Perth Canyon Marine Park, located approximately 50 km west of the proposed action area.

#### ***Cultural heritage values***

241) I noted Cockburn Sound is a region of significant Indigenous culture and heritage. Noongar people are the Traditional Owners of the south-west of Western Australia, which incorporates the proposed action area. The proposed action occurs over two Native Title determined areas, being the Gnaala Karla Booja (WC1998/058) in the south (including Cockburn Sound and Kwinana) and the Whadjuk (WC2011/009) in the north (including Owen Anchorage and Gage Roads).

242) I noted the proponent has stated that a search of the DPLH Aboriginal Cultural Heritage Inquiry System (ACHIS) recorded no Registered Aboriginal heritage sites within 1 km of the project area. I also noted it was stated that the closest Aboriginal heritage site to the proposed action is Thomas Oval, approximately 2 km southeast of the proposed action area.

- 243) I noted the department's search of the ACHIS database has found that no Aboriginal Cultural Heritage sites occur within 5 km of the proposed action area that are within the Commonwealth marine environment boundary.
- 244) I noted the proponent has stated that a search of ACHIS identified one 'Other' Heritage Place within the proposed action area of 'Indian Ocean' mythological Aboriginal heritage site (S02169/3776). The Indian Ocean heritage site includes Cockburn Sound and the waters north to Fremantle and West to Rottnest Island. The status of this site is 'Stored Data/Not a site' and as such is not protected under the *Aboriginal Heritage Act 1972*.
- 245) Due to the absence of knowledge related to underwater cultural heritage, I noted that if I determined that the proposed action was a controlled action, the department would recommend requesting further information during the assessment stage to clarify the impact to cultural underwater heritage within and surrounding the proposed action area particularly as a result of the proposed dredging activities and sediment deposition.

#### ***Social and economic values***

- 246) I noted Cockburn Sound supports multiple significant commercial fisheries, as well as commercial aquacultural industries. Categorised by habitat, commercially important species include:
- a) Open (deep) water: pink snapper, pilchards and bonito;
  - b) Shallow water with sandy seabed: whiting, juvenile king prawns, pilchards, blue sprat and whitebait;
  - c) Seagrass meadows: octopus, leatherjackets, wrasse, crabs and herring; and
  - d) Jetties and groynes: herring, yellowtail scad, trevally, samson fish and mussels.
- 247) As stated within the Marine Fauna Desktop Study, I noted current managed fisheries operating in Cockburn Sound include:
- a) Cockburn Sound (line and pot) fishery;
  - b) Cockburn Sound fish net fishery;
  - c) Cockburn Sound crab fishery; and
  - d) Cockburn Sound mussel fishery.
- 248) I noted that as stated within the public comments, the marine project area is utilised for a range of recreational and commercial activities.
- 249) I noted that impacts to the social and economic values of the Commonwealth marine environment should be considered in planning and users should be appropriately consulted.



**Potential impacts**

- 250) I considered that commercial and recreational fishing species are likely to be impacted by the proposed action. The potential decline in seagrass biomass because of the dredging component of the proposed action could negatively affect species populations that utilise seagrass habitat for spawning, as nurseries, or as a feeding ground.
- 251) I considered that proposed dredging and associated habitat modification activities may cause a decline in phytoplankton primary productivity, negatively impacting the food web and community structure within Cockburn Sound and the adjacent Commonwealth marine environment.
- 252) I considered that construction and operational activities related to the proposed action may result in a restriction of recreational activities within and surrounding the proposed action area.

**Heritage values**

- 253) I noted there are no National Heritage Places located in the marine project area.
- 254) I noted within 10 km of the proposed action area, one Commonwealth Heritage Place was found (Garden Island) adjacent to the Commonwealth marine environment.
- 255) I noted Garden Island values relevant to the proposed action and potential impacts include:
- a) Nesting habitat on sandy beaches for the migratory Fairy Tern;
  - b) Haul out for the Australian Sea Lion;
  - c) Bridled Tern, Rainbow Bee-eaters, Little Penguin and Osprey are known to nest in and on the rocks surrounding the island; and
  - d) Provides an excellent representation of coastal heath which is floristically very distinct from mainland coastal and limestone heaths.
- 256) I noted the proposed action has the potential to degrade the Commonwealth Heritage Place values of Garden Island. The construction and operation activities of the proposed action have the potential to impact on Garden Island through the mobilisation of contamination from the proposed action area inside Cockburn Sound to the coast of Garden Island. Also, impacts to keystone marine species such as seagrass meadows may potentially affect the ecosystem of the island.

**Avoidance and mitigation**

- 257) I noted the referral lacks detailed avoidance and mitigation measures to protect the values of the Commonwealth marine area. I agreed with the department that a major concern is the absence of mitigation measures in relation to noise and light pollution, dredge spoil, or any modelling of ocean currents to determine whether the values within the Commonwealth marine area would be impacted by dredge spoil.

258) I noted that the referral states that avoidance and mitigation considerations for the potential impacts of the proposed action will be further addressed in the assessment stage.

***Precautionary principle***

259) The department considered and I agreed that the proponent has not provided information that would demonstrate that there are no likely significant impacts on the values of the Commonwealth marine area. I therefore applied the precautionary principle for the following reasons:

- a) The department considered and I agreed that the impacts to the marine component of the proposed action area has the potential to impact upon the values of the Commonwealth marine area.
- b) Based on the known likely risks and proximity of the proposed action to the Commonwealth marine area, the department considered, and I agreed that there is a substantial uncertainty concerning how construction and operation activities of the proposed action will affect the values of the Commonwealth marine area. I noted that subject to my decision, as the department cannot rule out a likely significant impact, the department would recommend seeking further information during the assessment stage.

***Conclusion***

260) In making my decision, I considered the nature of the proposed action, the precautionary principle, the referral documentation, the South-west Marine Bioregional Plan and the EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance.

261) The department considered, and I agreed, that if the proposed avoidance and mitigation measures are implemented, the impacts from noise and light pollution and dredge spoil from the proposed action are still likely. The department therefore considered, and I agreed that the proposed action is likely to have a significant impact on the lifecycle of marine species occurring in the Commonwealth marine area and the whole of the Commonwealth marine area environment.

262) I noted that if I determined that the proposed action was a controlled action, the department would recommend requesting further information during the assessment stage on sediment plume modelling, light pollution, seagrass impacts, contamination and hydrography to inform the potential impacts to the Commonwealth marine area.

***Commonwealth land (s26 & s27A)***

263) ‘Commonwealth land’ is defined as land owned or leased by the Commonwealth or Commonwealth agency.

264) I noted the PMST generated by the department identified 292 Commonwealth Lands located within 10 km of the proposed action area. Most Commonwealth land areas identified are associated with the Department of Defence, with the relevant Commonwealth land to be potentially impacted by the proposed action being in Garden Island, approximately 3.5 km from the proposed action area.

265) As this land is owned by the Department of Defence and is Commonwealth land, I considered whether the proposed action is likely to have a significant impact on the environment within Garden Island. 'Environment' is defined under section 528 of the EPBC Act to include:

- Ecosystems and their constituent parts, including people and communities;
- Natural and physical resources;
- The qualities and characteristics of locations, places and areas;
- Heritage values of places; and
- The social, economic and cultural aspects of a thing mentioned in the above dot points.

266) I noted and considered further information on what is likely to impact the 'environment' (as defined under section 528) from the EPBC Act Policy Statement – Significant Impact Guidelines – Actions on, or impacting upon, Commonwealth land, and actions by Commonwealth agencies.

267) I noted the proponent has stated that the proposed action is not taken on, and is not expected to impact upon, Commonwealth land, and it will not have any impacts on Garden Island. The referral documentation also stated that any potential impacts from the proposed action in proximity to Garden Island would be to the surrounding waters, as opposed to the terrestrial areas of Commonwealth land.

#### ***Natural values***

268) I noted the heritage listing of Garden Island outlines the following values being present on the island:

- a) Nesting habitat on sandy beaches for the migratory Fairy Tern;
- b) Haul out location for the Australian Sea Lion; and
- c) Known predator free breeding grounds for the Bridled Tern, Rainbow Bee-eaters, Little Penguin and Osprey.

269) I noted species such as the Little Penguin and Australian Sea Lion serve as bioindicators in understanding the coastal marine habitat due to their habitat interconnecting through feeding at sea, nesting and resting on land.

#### ***Potential impacts***

270) I accepted the department's advice that the proposed action will increase vessel movements through the South-west Marine Region and within Cockburn Sound, as well as increase vessel movement within the marine project area from construction activities. I noted that due to this, injury and/or mortality from vessel strike to marine fauna that are ecosystem values of Commonwealth land could potentially occur. I agreed that this is of particularly high concern for air-breathing species as they spend prolonged periods of time at the water's surface, including the Australian Sea Lion and the Little Penguin.

- 271) I noted further relevant potential impacts were discussed in paragraphs 222 to 230.
- 272) I noted that construction and operational activities of the proposed action could potentially adversely affect biologically important behaviours of species located in Garden Island, specifically the above-mentioned impacts from light pollution, noise pollution, water contamination, and capital dredging.
- 273) I noted because of these impacts that there is a possibility that the proposed action will:
- a) Modify, destroy, fragment, isolate or disturb an important or substantial area of habitat such that there will be an adverse impact on marine ecosystem functioning and the integrity of the environment on Commonwealth land;
  - b) Have a substantial adverse effect on a population of the Bridled Tern, Rainbow Bee-eaters, Little Penguin and Osprey, including its lifecycle (e.g. breeding, feeding, migration behaviour or life expectancy) and spatial distribution through the disruption of food availability and reproductive success.
  - c) Result in a substantial change in water quality which may adversely impact on biodiversity and ecological integrity; and
  - d) Result in persistent organic chemicals, heavy metals, or other potentially harmful chemicals accumulating in the marine environment, such that biodiversity and ecological integrity may be adversely affected on Commonwealth land.
- 300) I noted because of these impacts, there is a real chance or possibility that the action will impact the values of Garden Island, by:
- a) Causing a long-term decrease in, or threaten the viability of, a native animal population or populations, through death, injury or other harm to individuals; and
  - b) Displacing or substantially limiting the movement or dispersal of native animal populations.
- 301) I agreed with the department's advice that given the information contained in the referral documentation, the nature and scale of the proposed action and its potential impacts, and the proximity to Commonwealth land, the proposed action is likely to have a significant impact on the environmental values of Commonwealth land.
- i) For these reasons the department considered, and I agreed that sections 26 and 27A are controlling provisions for the proposed action.

### ***Avoidance and mitigation***

- 302) I noted the referral lacked detailed avoidance and mitigation measures to protect the values of Commonwealth land. I agreed with the department that a main area of concern is the absence of mitigation measures in relation to noise and light pollution, dredge spoil, or any modelling of ocean currents to determine whether the values within the Commonwealth land would be impacted by dredge spoil.

303) I noted the referral stated that avoidance and mitigation considerations for the potential impacts of the proposed action will be further addressed in the assessment stage.

### ***Precautionary principle***

304) The department considered and I agreed that the proponent has not provided information that would demonstrate that there are no likely significant impacts on the values of Commonwealth land. I therefore applied the precautionary principle for the following reasons:

- a) The department considered and I agreed that the impacts to the marine component of the proposed action area have the potential to indirectly impact upon the values of Commonwealth land of Garden Island.
- b) Based on the known likely risks and proximity of the proposed action to the Commonwealth land of Garden Island, the department considered, and I agreed that there is a substantial uncertainty concerning how construction and operation activities of the proposed action will affect the natural values of Commonwealth land. I noted that subject to my decision, as the department cannot rule out a likely significant impact, the department would recommend seeking further information during the assessment stage.

### ***Conclusion***

305) In making my decision, I considered the nature of the proposed action, the precautionary principle, the referral documentation, the Wildlife Conservation Plan for Seabirds and the EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance.

306) The department considered, and I agreed, that if the proposed avoidance and mitigation measures are implemented, the impacts from noise and light pollution and dredge spoil as a result of the proposed action are still likely. Furthermore, given the absence of information confirming the impacts to the terrestrial values on Garden Island, the department considered, and I agreed, that the proposed action is likely to have a significant impact on the lifecycle of marine species that are values of the Commonwealth land of Garden Island.

307) Because of my decision to trigger Commonwealth land as a controlling provision, I noted that an assessment of the environment will apply.

308) I noted that should I decide that the proposed action is a controlled action, the department considered that information would be required during the assessment stage on direct and indirect impacts and mitigation measures in relation to Commonwealth land.

### ***Other relevant matters***

#### **Significant impact guidelines**

309) I considered the EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance (Significant Impact Guidelines 1.1) and Significant Impact Guidelines 1.2, which provides guidance on determining whether an action is likely to have a significant impact on a matter protected by Part 3 of the EPBC Act. This is a policy document, not

a legal instrument. However, I considered the factors identified in Significant Impact Guidelines 1.1 and 1.2 were appropriate in assessing the likely impacts of the proposed action.

#### Precautionary principle

- 310) In making my decision under section 75, I took account of the precautionary principle in accordance with section 391 which states that a lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.
- 311) In particular, I found that there are threats of serious or irreversible damage to the listed threatened species and communities, listed migratory species, the Commonwealth marine area and Commonwealth land. I also considered that there is a lack of full scientific certainty because the proponent has not provided information that would demonstrate that there are not likely significant impacts to several MNES within the four aforementioned controlling provisions.
- 312) In relation to the protected matters for provisions which are not controlling provisions, the department considered, and I agreed, that given the information contained in the referral documentation, the nature, scale and location of the proposed action and its potential impacts, that there are not threats of serious or irreversible environmental damage. Further, the department did not consider that there is a lack of scientific certainty concerning the scope of the threat of environmental damage in relation to these other protected matters. I agreed with this advice.

#### Bioregional plans

- 313) I was also required, pursuant to s 176(5) of the EPBC Act, to have regard to a bioregional plan in making my decision to which the plan is relevant.
- 314) I had regard to the Marine bioregional plan for the South-west Marine Region in making my decision, in particular the range of conservation values identified for the bioregion, including Key Ecological Features, Biologically Important Areas, and the EPBC Act listed species that occupy or use the Commonwealth marine environment.

#### Management Plans for Commonwealth Reserves

- 315) In accordance with s 362(2), I must not exercise any functions or powers in relation to a Commonwealth reserve inconsistently with a management plan that is in operation for the reserve. I was advised by the department that there are no Commonwealth reserve management plans relevant to the location of the proposed action.
- 316) On the basis of the above, I concluded that a decision that the proposed action is a controlled action would not be contrary to s 362 of the EPBC Act.

#### **Conclusion – controlling provisions**

- 317) In light of my findings, I was satisfied that the proposed action is likely to have a significant impact on matters protected by Part 3 of the EPBC Act. I therefore decided on 26 September that the proposed action is a controlled action and the controlling provisions are sections 18 and 18A (listed threatened species and communities), sections 20 and 20A (listed migratory species), sections 23 and 24A (Commonwealth marine areas) and sections 26 and 27A (Commonwealth land).

### Protected matters that are not controlling provisions

318) The department noted and I agreed that the referral documentation and the PMST have concluded that other protected matters are not likely to be significantly impacted by the proposed action. These conclusions have been summarised in the table below.

Provision	Discussion
<b>World Heritage properties (s12 &amp; s15A)</b>	<p>I noted the PMST generated by the department identified one declared World Heritage property of the Australian Convict Sites (Fremantle Prison) located within 10 km of the proposed Action area.</p> <p>I noted the proposed Action will not have or be likely to have a significant impact on any World Heritage properties due to the distance to the Australian Convict Sites (Fremantle Prison) from the proposed action area.</p> <p>I further noted, given the information contained in the referral documentation, the nature and scale of the proposed action and its potential impacts, and the distance to World Heritage properties, the proposed action is unlikely to have a significant impact on the World Heritage values of World Heritage properties.</p> <p>For these reasons the department considered, and I agreed that sections 12 and 15A are not controlling provisions for the proposed action.</p>
<b>National Heritage places (s15B &amp; s15C)</b>	<p>I noted the PMST generated by the department identified one National Heritage place of Fremantle Prison (former) located within 10 km of the proposed Action area.</p> <p>I noted the proposed Action will not have or be likely to have a significant impact on any Nation Heritage Places due to the distance to Fremantle Prison (former) from the proposed action area.</p> <p>I further noted, given the information contained in the referral documentation, the nature and scale of the proposed action and its potential impacts, and the distance to National Heritage places, the proposed action is unlikely to have a significant impact on the National Heritage values of National Heritage places.</p> <p>For these reasons the department considered, and I agreed that sections 15B and 15C are not controlling provisions for the proposed action.</p>

Provision	Discussion
<b>Ramsar wetlands (s16 &amp; s17B)</b>	<p>I noted the PMST generated by the department identified the Forrestdale and Thomsons Lakes declared Ramsar listed wetlands of international importance within 10 km of the proposed action area.</p> <p>I noted the referral documentation states that the proposed action does not directly intersect any Ramsar wetlands, nor is it in close proximity, hydrologically upstream or up-gradient to any Ramsar wetlands. The proposed designated proponent also stated that the Forrestdale and Thomsons Lakes are approximately 14 km and 6 km hydrologically upstream of the project area, respectively.</p> <p>I noted the PMST generated by the department also identified both the Becher Point Wetlands and Peel Yalgorup System declared Ramsar listed wetlands of international importance within 10 km of the proposed action area. The proposed action is 20-30 km upstream from the Peel-Yalgorup system.</p> <p>I further noted, given the information contained in the referral documentation, the nature and scale of the proposed action and its potential impacts, and the distance to Ramsar listed wetlands of international importance, the proposed action is unlikely to have a significant impact on the ecological character of Ramsar listed wetlands of international importance.</p> <p>For these reasons the department considered and I agreed that sections 16 and 17B are not controlling provisions for the proposed action.</p>
<b>Nuclear action (s21 &amp; s22A)</b>	<p>I noted public comments have indicated a considerable public interest on the proposed actions intersection with AUKUS nuclear operations. The proposed action is being undertaken by the WA state government and AUKUS is being undertaken by the Commonwealth government and are not related actions.</p> <p>I noted the proposed action does not meet the definition of a nuclear action as defined in the EPBC Act. For this reason, the department considered, and I agreed that sections 21 and 22A are not controlling provisions for the proposed action.</p>




Provision	Discussion
<b>Great Barrier Reef Marine Park (s24B &amp; s24C)</b>	<p>I noted the proposed Action is not being taken in the Great Barrier Reef Marine Park.</p> <p>I further noted, given the information contained in the referral documentation, the nature and scale of the proposed Action and its potential impacts, and the distance to the Great Barrier Reef Marine Park, the proposed Action is unlikely to have a significant impact on the Great Barrier Reef Marine Park.</p> <p>For these reasons the department considered, and I agreed that sections 24B and 24C are not controlling provisions for the proposed Action.</p>
<b>A water resource, in relation to unconventional gas development and large coal mining development (s24D &amp; s24E)</b>	<p>I noted the proposed Action does not involve an unconventional gas development or a large coal mining development. For this reason, the department considered, and I agreed that sections 24D and 24E are not controlling provisions for the proposed Action.</p>
<b>Commonwealth Heritage places overseas (s27B &amp; s27C)</b>	<p>I noted the proposed Action is not being taken overseas. For this reason, the department considered and I agreed that sections 27B and 27C are not controlling provisions for the proposed Action.</p>
<b>Commonwealth action (s28)</b>	<p>I noted the person proposing to take the Action is not a Commonwealth agency. For this reason, the department considered, and I agreed that section 28 is not a controlling provision for the proposed Action.</p>

### ***Assessment Approach***

319) As I decided that the proposed action is a controlled action, I was required to decide on the approach for an assessment in accordance with section 87 of the EPBC Act. I agreed with the department's recommendation that the proposal be assessed by public environment report (PER) under Division 5 of Part 8 of the EPBC Act.

320) Given the number of Matters of National Environmental Significance likely to be impacted, the large scale of the action, the complexity of potential impacts throughout the life of the project, the variable adequacy of the information provided, the moderate degree of public interest in the action, and the assessment approach of public environment report (PER) determined by the WA EPA, the department considered and I decided that assessment by public environment report represents an appropriate method of assessment that will ensure that the impacts to protected matters are appropriately assessed and sufficient public consultation is undertaken.

<b>name and position</b>	Kylie Calhoun Branch Head Environment Assessments West Branch
<b>signature</b>	
<b>date of decision</b>	6 August 2025

## Annexure A – Relevant Legislation

**Section 18 of the EPBC Act** relevantly provides:

(1) A person must not take an action that:

- (a) has or will have a significant impact on a listed threatened species included in the extinct in the wild category; or
- (b) is likely to have a significant impact on a listed threatened species included in the extinct in the wild category.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

*Critically endangered species*

(2) A person must not take an action that:

- (a) has or will have a significant impact on a listed threatened species included in the critically endangered category; or
- (b) is likely to have a significant impact on a listed threatened species included in the critically endangered category.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

*Endangered species*

(3) A person must not take an action that:

- (a) has or will have a significant impact on a listed threatened species included in the endangered category; or
- (b) is likely to have a significant impact on a listed threatened species included in the endangered category.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

*Vulnerable species*

- (4) A person must not take an action that:
- (a) has or will have a significant impact on a listed threatened species included in the vulnerable category; or
  - (b) is likely to have a significant impact on a listed threatened species included in the vulnerable category.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

*Critically endangered communities*

- (5) A person must not take an action that:
- (a) has or will have a significant impact on a listed threatened ecological community included in the critically endangered category; or
  - (b) is likely to have a significant impact on a listed threatened ecological community included in the critically endangered category.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

*Endangered communities*

- (6) A person must not take an action that:
- (a) has or will have a significant impact on a listed threatened ecological community included in the endangered category; or
  - (b) is likely to have a significant impact on a listed threatened ecological community included in the endangered category.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

**Section 18A of the EPBC Act** relevantly provides:

- (1) A person commits an offence if:
- (a) the person takes an action; and
  - (b) the action results or will result in a significant impact on:
    - (i) a species; or
    - (ii) an ecological community; and
  - (c) the species is a listed threatened species, or the community is a listed threatened ecological community.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(1A) Strict liability applies to paragraph (1)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(2) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action is likely to have a significant impact on:
  - (i) a species; or
  - (ii) an ecological community; and
- (c) the species is a listed threatened species, or the community is a listed threatened ecological community.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2A) Strict liability applies to paragraph (2)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may commit an offence against section 496C.

(4) Subsections (1) and (2) do not apply to an action if:

- (a) the listed threatened species subject to the significant impact (or likely to be subject to the significant impact) is:
  - (i) a species included in the extinct category of the list under section 178; or
  - (ii) a conservation dependent species; or
- (b) the listed threatened ecological community subject to the significant impact (or likely to be subject to the significant impact) is an ecological community included in the vulnerable category of the list under section 181.

Note 1: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Note 2: Section 19 sets out other defences. The defendant bears an evidential burden in relation to the matters in that section too. See subsection 13.3(3) of the *Criminal Code*.

## Section 20 of the EPBC Act relevantly provides:

(1) A person must not take an action that:

- (a) has or will have a significant impact on a listed migratory species; or
- (b) is likely to have a significant impact on a listed migratory species.

Civil penalty:

- (a) for an individual—5,000 penalty units;

(b) for a body corporate—50,000 penalty units.

(2) Subsection (1) does not apply to an action if:

- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
- (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
- (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
- (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

**Section 20A of the EPBC Act relevantly provides:**

(1) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action results or will result in a significant impact on a species; and
- (c) the species is a listed migratory species.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(1A) Strict liability applies to paragraph (1)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(2) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action is likely to have a significant impact on a species; and
- (c) the species is a listed migratory species.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2A) Strict liability applies to paragraph (2)(c).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(3) An offence against subsection (1) or (2) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may commit an offence against section 496C.

(4) Subsections (1) and (2) do not apply to an action if:

- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
- (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

- (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
- (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

### Section 23 of the EBPC Act relevantly provides:

- (1) A person must not take in a Commonwealth marine area an action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

#### *Actions outside Commonwealth marine areas affecting those areas*

- (2) A person must not take outside a Commonwealth marine area but in the Australian jurisdiction an action that:
  - (a) has or will have a significant impact on the environment in a Commonwealth marine area; or
  - (b) is likely to have a significant impact on the environment in a Commonwealth marine area.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

#### *Fishing in State or Territory waters managed by Commonwealth*

- (3) A person must not take in the coastal waters (as defined in the *Fisheries Management Act 1991*) of a State or the Northern Territory an action:
  - (a) that:
    - (i) is fishing (as defined in the *Fisheries Management Act 1991*); and
    - (ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
  - (b) that:
    - (i) has or will have a significant impact on the environment in those coastal waters; or
    - (ii) is likely to have a significant impact on the environment in those coastal waters.

Civil penalty:

- (a) for an individual—5,000 penalty units;

- (b) for a body corporate—50,000 penalty units.

*Exceptions to prohibitions*

- (4) Subsection (1), (2) or (3) does not apply to an action if:
  - (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or
  - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or
  - (c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
  - (d) the person taking the action is the Commonwealth or a Commonwealth agency; or
  - (e) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: Section 28 regulates actions by the Commonwealth or a Commonwealth agency with a significant impact on the environment.

*Exception—fishing in Commonwealth waters managed by State*

- (5) Subsection (1) does not apply to an action if the action:
  - (a) is fishing (as defined in the *Fisheries Management Act 1991*); and
  - (b) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of a State or the Northern Territory as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
  - (c) is permitted under a law of the State or Territory.

*Exception—fishing outside Commonwealth marine areas*

- (6) Subsection (2) does not apply to an action that:
  - (a) is fishing (as defined in the *Fisheries Management Act 1991*); and
  - (b) is permitted under a law of a State or self-governing Territory.

**Section 24A of the EPBC Act relevantly provides:**

- (1) A person commits an offence if:
  - (a) the person takes an action; and
  - (b) the action is taken in a Commonwealth marine area; and
  - (c) the action results or will result in a significant impact on the environment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (1A) Strict liability applies to paragraph (1)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

*Actions in Commonwealth marine areas likely to affect the environment*

(2) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action is taken in a Commonwealth marine area; and
- (c) the action is likely to have a significant impact on the environment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2A) Strict liability applies to paragraph (2)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

*Actions outside Commonwealth marine areas affecting those areas*

(3) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action is taken outside a Commonwealth marine area but in the Australian jurisdiction; and
- (c) the action results or will result in a significant impact on the environment in an area; and
- (d) the area is a Commonwealth marine area.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(3A) Strict liability applies to paragraphs (3)(b) and (d).

Note: For strict liability, see section 6.1 of the *Criminal Code*. *Actions likely to affect environment in Commonwealth marine areas*

(4) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action is taken outside a Commonwealth marine area but in the Australian jurisdiction; and
- (c) the action is likely to have a significant impact on the environment in an area; and
- (d) the area is a Commonwealth marine area.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(4A) Strict liability applies to paragraphs (4)(b) and (d).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

*Fishing with impact in State or Territory waters managed by Commonwealth*

(5) A person commits an offence if:

- (a) the person takes an action that:
  - (i) is fishing (as defined in the *Fisheries Management Act 1991*); and
  - (ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and



- (b) the action is taken in the coastal waters (as defined in the *Fisheries Management Act 1991*) of a State or the Northern Territory; and
- (c) the action results or will result in a significant impact on the environment in those coastal waters.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(5A) Strict liability applies to paragraph (5)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

#### *Fishing with likely impact in State or Territory waters managed by Commonwealth*

- (6) A person commits an offence if:
  - (a) the person takes an action that:
    - (i) is fishing (as defined in the *Fisheries Management Act 1991*); and
    - (ii) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of the Commonwealth as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
  - (b) the action is taken in the coastal waters (as defined in the *Fisheries Management Act 1991*) of a State or the Northern Territory; and
  - (c) the action is likely to have a significant impact on the environment in those coastal waters.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(6A) Strict liability applies to paragraph (6)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

#### *Penalties*

- (7) An offence against subsection (1), (2), (3), (4), (5) or (6) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may commit an offence against section 496C.

#### *Defences—general*

- (8) Subsection (1), (2), (3), (4), (5) or (6) does not apply to an action if:
  - (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
  - (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

- (c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
- (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

*Defence—fishing in Commonwealth waters managed by State*

- (9) Subsections (1) and (2) do not apply to an action if the action:
  - (a) is fishing (as defined in the *Fisheries Management Act 1991*); and
  - (b) is included in the class of activities forming a fishery (as defined in that Act) that is managed under the law of a State or the Northern Territory as a result of an agreement made under section 71 or 72 of that Act before the commencement of this section; and
  - (c) is permitted under a law of the State or Territory.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

*Defence—fishing outside Commonwealth marine areas*

- (10) Subsections (3) and (4) do not apply to an action that:
  - (a) is fishing (as defined in the *Fisheries Management Act 1991*); and
  - (b) is permitted under a law of a State or self-governing Territory.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

**Section 26 of the EPBC Act** relevantly provides:

- (1) A person must not take on Commonwealth land an action that has, will have or is likely to have a significant impact on the environment.

Civil penalty:

- (a) for an individual—1,000 penalty units;
- (b) for a body corporate—10,000 penalty units.

*Actions outside Commonwealth land affecting that land*

- (2) A person must not take outside Commonwealth land an action that:
  - (a) has or will have a significant impact on the environment on Commonwealth land;
  - or
  - (b) is likely to have a significant impact on the environment on Commonwealth land.

Civil penalty:

- (a) for an individual—1,000 penalty units;

- (b) for a body corporate—10,000 penalty units.

*Exceptions to prohibitions*

- (3) Subsection (1) or (2) does not apply to an action if:
  - (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or
  - (a) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or
  - (b) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
  - (c) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process); or
  - (d) the person taking the action is the Commonwealth or a Commonwealth agency.

Note 1: This section protects (among other things) the Commonwealth Heritage values of a Commonwealth Heritage place on Commonwealth land, because the heritage values of a place are part of the environment. See the definition of **environment** in section 528.

Note 2: Section 28 regulates actions by the Commonwealth or a Commonwealth agency with a significant impact on the environment.

**Section 27A of the EPBC Act** relevantly provides:

- (1) A person commits an offence if:
  - (a) the person takes an action; and
  - (b) the action is taken on Commonwealth land; and
  - (c) the action results or will result in a significant impact on the environment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(1A) Strict liability applies to paragraph (1)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (2) A person commits an offence if:
  - (a) the person takes an action; and
  - (b) the action is taken on Commonwealth land; and
  - (c) the action is likely to have a significant impact on the environment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2A) Strict liability applies to paragraph (2)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) A person commits an offence if:
  - (a) the person takes an action; and

- (b) the action is taken outside Commonwealth land but in the Australian jurisdiction; and
- (c) the action results or will result in a significant impact on the environment in an area; and
- (d) the area is Commonwealth land.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(3A) Strict liability applies to paragraphs (3)(b) and (d).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(4) A person commits an offence if:

- (a) the person takes an action; and
- (b) the action is taken outside Commonwealth land but in the Australian jurisdiction; and
- (c) the action is likely to have a significant impact on the environment in an area; and
- (d) the area is Commonwealth land.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(4A) Strict liability applies to paragraphs (4)(b) and (d).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(5) An offence against subsection (1), (2), (3) or (4) is punishable on conviction by imprisonment for a term not more than 2 years, a fine not more than 120 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also commit an offence against section 495.

Note 3: If a person takes an action on land that contravenes this section, a landholder may commit an offence against section 496C.

(6) Subsection (1), (2), (3) or (4) does not apply to an action if:

- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of the subsection; or
- (b) Part 4 lets the person take the action without an approval under Part 9 for the purposes of the subsection; or
- (c) there is in force a decision of the Minister under Division 2 of Part 7 that the subsection is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
- (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process); or
- (e) the person taking the action is a Commonwealth agency.

Note 1: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

Note 2: This section protects (among other things) the Commonwealth Heritage values of a Commonwealth Heritage place on Commonwealth land, because the heritage values of a place are part of the environment. See the definition of **environment** in section 528.

Note 3: Section 28 regulates actions by the Commonwealth or a Commonwealth agency with a significant impact on the environment.

**Section 67 of the EPBC Act** relevantly provides:

An action that a person proposes to take is a **controlled action** if the taking of the action by the person without approval under Part 9 for the purposes of a provision of Part 3 would be (or would, but for section 25AA or 28AB, be) prohibited by the provision. The provision is a **controlling provision** for the action.

**Section 68 of the EPBC Act** relevantly provides:

- (1) A person proposing to take an action that the person thinks may be or is a controlled action must refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.
- (2) A person proposing to take an action that the person thinks is not a controlled action may refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.

**Section 74 of the EPBC Act** relevantly provides:

*Inviting other Commonwealth Ministers to provide information*

- (1) As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must:
  - (a) inform any other Minister whom the Environment Minister believes has administrative responsibilities relating to the proposal; and
  - (b) invite each other Minister informed to give the Environment Minister within 10 business days information that relates to the proposed action and is relevant to deciding whether or not the proposed action is a controlled action.

*Inviting comments from appropriate State or Territory Minister*

- (2) As soon as practicable after receiving, from the person proposing to take an action or from a Commonwealth agency, a referral of a proposal to take an action in a State or self-governing Territory, the Environment Minister must, if he or she thinks the action may have an impact on a matter protected by a provision of Division 1 of Part 3 (about matters of national environmental significance):
  - (a) inform the appropriate Minister of the State or Territory; and
  - (b) invite that Minister to give the Environment Minister within 10 business days:
    - (i) comments on whether the proposed action is a controlled action; and
    - (ii) information relevant to deciding which approach would be appropriate to assess the relevant impacts of the action (including if the action could be assessed under a bilateral agreement).

*Inviting public comment*

(3) As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must cause to be published on the Internet:

- (a) the referral; and
- (b) an invitation for anyone to give the Minister comments within 10 business days (measured in Canberra) on whether the action is a controlled action.

**Section 74A of the EPBC Act** relevantly provides:

(1) If the Minister receives a referral in relation to a proposal to take an action by a person, and the Minister is satisfied the action that is the subject of the referral is a component of a larger action the person proposes to take, the Minister may decide to not accept the referral.

(4) If the Minister decides to accept a referral under subsection (1), the Minister must, at the time of making a decision under section 75:

- (a) give written notice of the decision to the person who referred the proposal to the Minister;
- (b) publish in accordance with the regulations (if any), a copy or summary of the decision.

**Section 75 of the EPBC Act** relevantly provides:

*Is the action a controlled action?*

(1A) The Minister must decide:

- (a) whether the action that is the subject of a proposal referred to the Minister is a controlled action; and
- (b) which provisions of Part 3 (if any) are controlling provisions for the action.

(1AA) To avoid doubt, the Minister is not permitted to make a decision under subsection (1) in relation to an action that was the subject of a referral that was not accepted under subsection 74A(1).

*Minister must consider public comment*

(1A) In making a decision under subsection (1) about the action, the Minister must consider the comments (if any) received:

- (a) in response to the invitation under subsection 74(3) for anyone to give the Minister comments on whether the action is a controlled action; and
- (b) within the period specified in the invitation.

*Considerations in decision*

(2) If, when the Minister makes a decision under subsection (1), it is relevant for the Minister to consider the impacts of an action:

- (a) the Minister must consider all adverse impacts (if any) the action:
  - (i) has or will have; or

- (ii) is likely to have;  
on the matter protected by each provision of Part 3; and
- (b) must not consider any beneficial impacts the action:
  - (i) has or will have; or
  - (ii) is likely to have;  
on the matter protected by each provision of Part 3.

*Timing of decision and designation*

(5) The Minister must make the decisions under subsection (1) and, if applicable, the designation under subsection (3), within 20 business days after the Minister receives the referral of the proposal to take the action.

**Section 87 of the EPBC Act** relevantly provides:

- (1) The Minister must decide which one of the following approaches must be used for assessment of the relevant impacts of an action that the Minister has decided is a controlled action:
  - (a) assessment by an accredited assessment process;
    - (aa) assessment on referral information under Division 3A;
  - (b) assessment on preliminary documentation under Division 4;
  - (c) assessment by public environment report under Division 5;
  - (d) assessment by environmental impact statement under Division 6;
  - (e) assessment by inquiry under Division 7.

*Considerations in making choice*

- (3) In making the decision, the Minister must consider:
  - (a) information relating to the action given to the Minister in the referral of the proposal to take the action; and
  - (b) any other information available to the Minister about the relevant impacts of the action that the Minister considers relevant (including information in a report on the impacts of actions under a policy, plan or program under which the action is to be taken that was given to the Minister under an agreement under Part 10 (about strategic assessments)); and
  - (c) any relevant information received in response to an invitation under subparagraph 74(2)(b)(ii); and
  - (d) the matters (if any) prescribed by the regulations; and      (e) the guidelines (if any) published under subsection (6).

**Section 176(5) of the EPBC Act** relevantly provides:

(5) Subject to this Act, the Minister must have regard to a bioregional plan in making any decision under this Act to which the plan is relevant.

**Section 391 of the EPBC Act** relevantly provides:

*Taking account of precautionary principle*

(1) The Minister must take account of the precautionary principle in making a decision listed in the table in subsection (3), to the extent he or she can do so consistently with the other provisions of this Act.

*Precautionary principle*

(2) The precautionary principle is that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.

Decisions in which precautionary principle must be considered

(3) The decisions are:

Decisions in which precautionary principle must be considered		
Item	Section decision is made under	Nature of decision
1	75	whether an action is a controlled action

**Section 528 of the EPBC Act** relevantly provides:

***environment*** includes:

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas; and
- (d) heritage values of places; and
- (e) the social, economic and cultural aspects of a thing mentioned in paragraph (a), (b), (c) or (d).

**Annexure B – Attachments to Decision Brief**

<b>A</b>	<b>Referral documentation</b>
A1	Referral
A2	Referral supporting figures
A3	Preliminary artist impressions
A4	Department of Transport Environmental Policy and Environmental Management Guidelines
A5	Westport 360 Images (16 January 2024)



A6	Westport Preferred Design Flythrough (29 November 2023)
A7	Westport Environmental, Social and Governance Strategy (2023)
A8	Benthic Habitat Mapping of Cockburn Sound (January 2018)
A9	Changes in seagrass coverage in Cockburn Sound, Western Australia, between 1967 and 1999 (2002)
A10	Perth Desalination Plant Discharge Modelling: Model Validation (BMT) (2018)
A11	Assessment of the impact of the Garden Island Causeway on the marine environment in Cockburn Sound (WAMSI) (2018)
A12	State of Cockburn Sound Marine Area Report (CSMC) (2022)
A13	Distributions of the major marine fauna found in the Perth metropolitan area (Yanchep to Mandurah) (December 2004)
A14	Effects of dredging-related activities on finfish: a review and management strategies (WAMSI) (2017)
A15	Literature review and preliminary risk assessment of the marine environment for the Westport Port and Environs Strategy (WAMSI) (October 2019)
A16	Mangles Bay Marine Project, Rockingham. Significance for Migratory Birds (Bamford) (2011)
A17	Conservation Significant Marine Fauna Desktop Study (O2M) (2023)
A18	Population distribution, aggregation sites and seasonal occurrence of Australia's western population of the grey nurse shark <i>Carcharias taurus</i> (Hoschke et al.) (2023)
A19	Species group report card – pinnipeds. Supporting the marine bioregional plan for the South-west Marine Region (DSEWPAC) (2012)
A20	Westport Last Mile Area (WLMA) Fauna, Flora and Vegetation Desktop Study (Biota) (August 2023) SUPERCEDED
A21	Australasian Underwater Cultural Heritage Database (AUCHD)
A22	Australian Heritage Database
A23	Contaminated Sites Database
A24	Westport Last Mile Area Preliminary Site Investigation (August 2023)

A25	Westport Stage 2 Report – Future Port Recommendations (May 2020)
A26	Westport Port Precinct and Marine Sediment – Preliminary Site Investigation (July 2024)
A27	Westport Last Mile Area Biological Survey (Biota) (2024)
<b>B</b>	<b>Commonwealth or state legislation, planning frameworks or policy documents that are relevant to the proposed action</b>
B1	A Biodiversity Audit of Western Australia's 53 Biogeographical Subregions in 2002 (2003)
B2	PMST report (16 September 2024)
B3	PMST report with 2 km buffer (16 September 2024)
B4	PMST report with 10 km buffer (16 September 2024)
B5	PMST report with 2 km and 10 km buffers Excel Analysis (16 September 2024)
B6	EPBC Act Species and Ecological Communities Weekly Report (13 September 2024)
B7	EPBC Act Policy Statement – Significant Impact Guidelines 1.1 – Matters of National Environmental Significance (2013)
B8	Approved Conservation Advice (incorporating listing advice) for the Tuart ( <i>Eucalyptus gomphocephala</i> ) woodlands and forests of the Swan Coastal Plain ecological community (2019)
B9	EPA Technical Guidance – Flora and Vegetation Surveys for Environmental Impact Assessments (2016)
B10	Draft survey guidelines for Australia's threatened orchids (2013)
B11	Approved Conservation Advice (incorporating listing advice) for the Banksia Woodlands of the Swan Coastal Plain ecological community (2016)
B12	Approved Conservation Advice for Honeymyrtle shrubland on limestone ridges of the Swan Coastal Plain Bioregion (2023)
B13	Referral guideline for 3 WA threatened black cockatoo species (2022)
B14	Carnaby's Cockatoo ( <i>Calyptorhynchus latirostris</i> ) Recovery Plan (2013)

B15	Approved Conservation Advice for <i>Calyptrorhynchus banksii</i> naso (Forest Red-tailed Black Cockatoo) (2009)
B16	Commonwealth Listing Advice on <i>Calyptrorhynchus banksii</i> naso (Forest Red-tailed Black Cockatoo) (2009)
B17	Forest Black Cockatoo (Baudin's Cockatoo <i>Calyptrorhynchus baudinii</i> and Forest Red-tailed Black Cockatoo <i>Calyptrorhynchus banksii</i> naso) Recovery Plan (2008)
B18	Survey guidelines for Australia's threatened birds (2010)
B19	National Recovery Plan for the Southern Right Whale ( <i>Eubalaena australis</i> ) (2024)
B20	National Guidelines for the Survey of Cetaceans, Marine Turtles and the Dugong (2024)
B21	Species group report card – cetaceans (2012)
B22	Marine Bioregional Plan for the South-west Marine Region (2012)
B23	Significant impact guidelines 1.2 - Actions on, or impacting upon, Commonwealth land and Actions by Commonwealth Agencies
B24	Conservation Advice <i>Neophoca cinerea</i> Australian Sea Lion (2020)
B25	Recovery Plan for the Australian Sea Lion ( <i>Neophoca cinerea</i> ) (2013)
B26	Issues paper for the Australian Sea Lion ( <i>Neophoca cinerea</i> ) (2013)
B27	Threat Abatement Plan for the impacts of marine debris on the vertebrate wildlife of Australia's coasts and oceans (2018)
B28	Species group report card – pinnipeds (2012)
B29	Recovery Plan for Marine Turtles in Australia (2017)
B30	Approved Conservation Advice for <i>Dermochelys coriacea</i> (Leatherback Turtle) (2008)
B31	Commonwealth Listing Advice on <i>Dermochelys coriacea</i> (2009)
B32	National Light Pollution Guidelines for Wildlife (2023)
B33	Species group report card – marine reptiles (2012)
B34	Recovery Plan for the White Shark ( <i>Carcharodon carcharias</i> ) (2013)

B35	Species group report card – sharks (2012)
B36	EPBC Act Policy Statement 3.21: Industry guidelines for avoiding, assessing and mitigating impacts on EPBC Act listed migratory shorebird species (2017)
B37	Wildlife Conservation Plan for Migratory Shorebirds (2015)
B38	Species group report card – seabirds (2012)
B39	Commonwealth marine environment report card (2012)
B40	The Australian Marine Spatial Information System (AM SIS) Advanced Map Viewer
B41	National Assessment Guidelines for Dredging (2009)
B42	Aboriginal Cultural Heritage Inquiry System (ACHIS)
B43	Australasian Underwater Cultural Heritage Database (AUCHD)
B44	Suttoon, A.L. (2022). Conceptual population model and knowledge review for Western Australian little penguin populations. Report prepared for the Department of Biodiversity, Conservation and Attractions, Western Australia by Carioja Marine Consulting, Fremantle, WA. 48pp.
B45	Cannell, B.L. (2024). Population estimate of the Little Penguin colony on Penguin Island during September to November 2023. Report for the City of Rockingham.
B46	Cannell, B. (2023). Options to mitigate potential starvation of penguins during the Westport dredging campaign – review and recommendations. Prepared for the WAMSI Westport Marine Science Program. Western Australian Marine Science Institution, Perth, Western Australia. 12 pp.
<b>C</b>	<b>Correspondence with proponent</b>
C1	BWSCP TEC impacts revised (20 August 2024)
C2	BWSCP TEC impacts revised – attachment (20 August 2024)
C3	Black Cockatoo impacts revised (22 August 2024)
<b>D</b>	<b>Public comments</b>
D1	Public comments (12 July 2024)
D2	James Mumme AOM public comment (6 July 2024)

D3	Conservation Council of WA public comment (11 July 2024)
D4	Leyland Campbell public comment (1) (12 July 2024)
D5	Leyland Campbell public comment (2) (12 July 2024)
<b>E</b>	<b>Ministerial comments</b>
E1	Ministerial comment – DWER (9 July 2024)
E2	Ministerial comment – Minister for Finance (10 July 2024)
E3	Ministerial comment – Minister for Resources and Minister for Northern Australia (10 July 2024)
E4	Ministerial comment – Minister for Defence (12 July 2024)
<b>F</b>	<b>Fee schedules</b>
F1	Fee schedule (with justifications)
F2	Fee schedule (without justifications)
<b>G</b>	<b>Decision notice FOR SIGNATURE</b>
<b>H</b>	<b>Letters</b>
H1	Letter to person proposing to take the action FOR SIGNATURE
H2	Letter to DWER FOR SIGNATURE