



Approval

Central Eyre Iron Project Infrastructure, Eyre Peninsula, SA (EPBC 2014/7285)

This decision is made under sections 130(1) and 133 of the *Environment Protection and Biodiversity Conservation Act 1999*.

Proposed action

person to whom the approval is granted	Iron Road Ltd
proponent's ACN	128 698 108
proposed action	To clear native vegetation and develop an infrastructure corridor, borefield and port facility in the central Eyre Peninsula region of South Australia [as described in EPBC Act referral 2014/7285 received on 30 July 2014].

Approval decision

Controlling Provisions	Decision
Listed threatened species and communities (sections 18 & 18A)	Approved
Listed migratory species (sections 20 & 20A)	Approved

conditions of approval

This approval is subject to the conditions specified below.

expiry date of approval

This approval has effect until 31 December 2046

Decision-maker

name and position Gregory Manning
Assistant Secretary
Assessment (WA, SA, NT) & Post Approvals Branch

signature



date of decision 9 March 2018

Conditions attached to the approval

1. To protect the **southern right whale**, the **approval holder** must implement measures to mitigate the impact of marine pile driving. Measures to be undertaken during **marine piling** activities must minimise the risk of physical impacts, including **temporary threshold shift** to **whales**. These must include:
 - a) pre-start-up visual observations
 - i. Continuous visual observations for **whales** must be undertaken to the extent of the piling **observation zone** by a **suitably qualified Marine Fauna Observer** for at least 30 minutes before the commencement of, during, and 15 minutes following **marine piling** activities.
 - b) operating procedures:
 - i. An **exclusion zone** must be implemented to ensure that **whales** are not exposed to Sound Exposure Levels of greater than or equal to 183 dB re 1 $\mu\text{Pa}^2\cdot\text{s}$ and must be no less than a 1250 metre horizontal radius from the pile hammer, unless a lesser **exclusion zone** has been determined from noise monitoring of **marine piling** and approved by the **Minister** prior to the commencement of **marine piling** activities.
 - ii. **Marine piling** activities must be initiated at the **soft start** level and then build up to full operating impact force. The **soft start procedures** should only commence if no **whales** have been sighted in the **exclusion zone** during pre-start-up visual operations.
 - iii. If **whales** are sighted within the **exclusion zone**, all **marine piling** activities must cease within the **exclusion zone** within two minutes of the sighting or as soon as possible if it is unsafe for personnel to cease **marine piling**. If **marine piling** does not cease within two minutes, the **approval holder** must report the incident to the **Minister** in writing within one business day.
 - iv. **Marine piling** activities must not commence or recommence until **whales** observed in the **exclusion zone** are observed to move outside the **exclusion zone** or 30 minutes have passed since the last sighting.
 - v. No **marine piling** operations shall occur between the hours of sunset and sunrise during the months of April to November, inclusive, in any year.
 - vi. **Marine piling** commenced prior to sunset or prior to a period of **low visibility** can continue between the hours of sunset and sunrise unless pile driving is suspended for 15 minutes or more.

Implementation of these measures must be monitored and the results submitted to the **Department** at the end of the port **construction** activity.

2. To protect the **southern right whale**, the **approval holder** must not undertake any blasting activities in the **marine environment**.
3. To protect the **southern right whale**, the **approval holder** must submit to the **Department** a Construction and Operation **Southern Right Whale** Management and Monitoring Plan (whale management plan). The whale management plan must be prepared in accordance with the **Department's Environmental Management Plan Guidelines** and include, but not be limited to:
 - a) a description, including appropriate mapping, of all threats to the **southern right whale** arising from port **construction**, operation and decommissioning activities
 - b) a plan to monitor **southern right whale** habitat use and behaviour, using appropriate survey techniques for mapping of potential threats to the **southern right whale** arising from port **construction**, operation and decommissioning activities
 - c) measures to mitigate the impacts of port **construction**, operation (including shipping) and decommissioning, including:
 - i. identification of and measures to avoid and reduce all sources of noise impacts in the port region, such that underwater noise does not exceed 183 dB re 1 $\mu\text{Pa}^2\cdot\text{s}$
 - ii. the risk of vessel strike
 - d) identify and address cumulative impacts arising from port **construction**, operation and decommissioning activities and management measures, and other activities in the port region potentially impacting on **southern right whales**
 - e) an outline of contributions to research on the **southern right whale** to the **Spencer Gulf Ecosystem and Development Initiative**
 - f) a commitment to capture and provide photo-identification and records of all **southern right whale** sightings associated with the action to the **Australian Right Whale Photo-Identification Catalogue**.

Construction must not **commence** until the whale management plan has been approved by the **Minister**. The approved whale management plan must be implemented.

4. The **approval holder** must report any injury or mortality of **whales** to the **Minister** in writing within one business day.
5. To offset residual impacts to the **southern right whale**, the **approval holder** must prepare and submit a **Southern Right Whale** Offset Research Plan (Plan) for approval by the **Minister**. The Plan must identify options, and outline priority projects, to address the threat to the **southern right whale** from vessel strike, including:
 - a) conservation outcomes that may be achieved, directly and/or indirectly, in the short and longer term, from implementing priority projects;
 - b) a process for developing priority projects;
 - c) a schedule for submitting Offsets Projects for the written approval of the **Department**;
 - d) commitments to full expenditure of offset contributions specified in condition 7 by no later than five years after **commencement** in the **marine environment**;

- e) how priority project/s are consistent with the criteria for research programs identified in Appendix A of the **EPBC Act Environmental Offsets Policy**;
- f) a communication and engagement program to promote achievement of the conservation outcomes; and
- g) responsibilities for data handling, technical review and reporting on implementation of the Plan.

The Plan must: be provided to the **South Australian Department of Environment, Water and Natural Resources**, the **Spencer Gulf Ecosystem and Development Initiative** and any other relevant stakeholders with an invitation to comment; and detail how the **approval holder** has responded to any comments received.

The **approval holder** must not **commence construction** in the **marine environment** unless the **Minister** has approved the Plan. The approved Plan must be implemented.

6. To offset residual impacts to the **southern right whale**, the **approval holder** must submit one or more Offset Projects to the **Department** for approval. Each Offset Project must:
 - a) be prepared by a **suitably qualified expert(s)**;
 - b) describe the research and why it will be beneficial to the conservation of the **southern right whale**;
 - c) conduct the research to a standard that would allow the results to be published in a peer-reviewed scientific journal;
 - d) detail the research methodology, who will be undertaking the research and their relevant expertise;
 - e) detail the timeframes for completion of the research and an itemised costings/budget;
 - f) permissions obtained (or to be obtained) to conduct the research;
 - g) be provided to the **South Australian Department of Environment, Water and Natural Resources**, the **Spencer Gulf Ecosystem and Development Initiative** and any other relevant stakeholders with an invitation to comment on the research proposal and detail how the **approval holder** has responded to any comments received;
 - h) submit the research for publication in an appropriate peer-reviewed scientific journal.

The **approval holder** must not commence an Offset Project until the Offset Project has been approved in writing by the **Department**. Unless otherwise agreed by the **Department**, approved Offset Projects must be implemented.

7. To offset residual significant impacts to the **southern right whale**, the **approval holder** must implement the Plan in accordance with the following requirements:
 - a) The **approval holder** must provide a minimum direct financial contribution of AUD \$500,000 for the funding of Offset Projects.
 - b) The value of expenditure on Offset Proposals must be adjusted annually in accordance with the Adelaide Consumer Price Index from 1 July 2018. The first adjustment is to be applied on 1 July 2018.

- c) The **approval holder** must have Offset Projects submitted to the **Department** for approval to the total value of Offset Projects, in accordance with 7(a), by no later than two years from **commencement** in the **marine environment**.
8. Within 10 days after the **commencement** of the action, the **approval holder** must advise the **Department** in writing of the actual date of **commencement**.
9. The **approval holder** must maintain accurate records substantiating all activities associated with or relevant to the conditions of approval, including measures taken to implement the management plan required by this approval, and make them available upon request to the **Department**. Such records may be subject to audit by the **Department** or an independent auditor in accordance with section 458 of the **EPBC Act**, or used to verify compliance with the conditions of approval. Summaries of audits will be posted on the **Department's** website. The results of audits may also be publicised through the general media.
10. Within three months of every 12 month anniversary of the **commencement** of the action, the **approval holder** must publish a report on their website addressing compliance with each of the conditions of this approval, including implementation of any management plans as specified in the conditions. Documentary evidence providing proof of the date of publication and non-compliance with any of the conditions of this approval must be provided to the **Department** at the same time as the compliance report is published.
11. Upon the direction of the **Minister**, the **approval holder** must ensure that an independent audit of compliance with the conditions of approval is conducted and a report submitted to the **Minister**. The independent auditor must be approved by the **Minister** prior to the commencement of the audit. Audit criteria must be agreed to by the **Minister** and the audit report must address the criteria to the satisfaction of the **Minister**.
12. The **approval holder** may choose to revise the **Southern Right Whale Management and Monitoring Plan** approved by the **Minister** under condition 3 without submitting it for approval under section 143A of the **EPBC Act**, if the taking of the action in accordance with the revised plan would not be likely to have a **new or increased impact**. If the **approval holder** makes this choice they must notify the **Department** in writing that the approved plan has been revised and provide the **Department**, at least four weeks before implementing the revised plan, with:
- i. with an electronic copy of the revised plan;
 - ii. an explanation of the differences between the revised plan and the approved plan; and
 - iii. the reasons the **approval holder** considers that the taking of the action in accordance with the revised plan would not be likely to have a **new or increased impact**.
- 12A. The **approval holder** may revoke its choice under condition 12 at any time by giving written notice to the **Department**. If the **approval holder** revokes the choice to implement the revised plan, without approval under section 143A of the **EPBC Act**, the plan approved by the **Minister** must be implemented.
- 12B. If the **Minister** gives a notice to the **approval holder** that the **Minister** is satisfied that the taking of the action in accordance with the revised plan would be likely to have a **new or increased impact**, then:
- i. condition 12 does not apply, or ceases to apply, in relation to the revised plan; and

- ii. the **approval holder** must implement the plan approved by the **Minister**.

To avoid any doubt, this condition does not affect any operation of conditions 12 and 12A in the period before the day the notice is given.

At the time of giving the notice, the **Minister** may also notify that for a specified period of time condition 12 does not apply for the plan required under the approval.

13. Conditions 12, 12A and 12B are not intended to limit the operation of section 143A of the **EPBC Act** which allows the **approval holder** to submit a revised plan to the **Minister** for approval, at any time after five years from the date of this approval, the **approval holder** has not substantially **commenced** the action, then the **approval holder** must not substantially **commence** the action without the written agreement of the **Minister**.
14. If the **Approval holder** wishes to carry out an activity otherwise than in accordance with the **Southern Right Whale** Offset Research Plan or an Offset Project approved under Conditions 5 or 6, respectively, the **Approval holder** must submit to the **Department** for the **Minister's** written approval a revised version of the plan or project. The **Approval holder** must not commence the varied activity until the **Minister** has approved the varied plan or project. If the **Minister** approves the revised plan or project, the revised plan or project must be implemented in place of the plan or project originally approved.
15. Unless otherwise agreed to in writing by the **Minister**, the **approval holder** must publish all management plans and Offset Projects referred to in these conditions of approval on their website. Each management plan must be published on the website within 1 month of being approved by the **Minister** or being submitted under condition 12.

Definitions

Approval holder is the person to whom approval is granted, or to whom the approval is transferred under section 145B of the **EPBC Act**.

Australian Right Whale Photo-Identification Catalogue is the *Australian Right Whale Photo-Identification Catalogue* or any subsequent photo database developed to share images and sightings of **southern right whales**.

Commence, commenced or commencement is the **construction** of any infrastructure, excluding fences and signage, associated with the proposed action.

Construction includes any preparatory works required to be undertaken including clearing vegetation, the erection of any onsite temporary structures and the use of heavy duty equipment for the purpose of breaking the ground for buildings or infrastructure for any component of the port facility.

Department is the Australian Government Department or any other agency administering the **EPBC Act**.

Department's Environmental Management Plan Guidelines means the *Environmental Management Plan Guidelines* published on the **Department's** website.

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

EPBC Act Environmental Offsets Policy is the *Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy* (October 2012).

Exclusion zone is a 1250 metre radius around pile driving operations where piling must cease if **whales** are observed within the designated radius.

Low visibility is the relative inability to see under given conditions of distance, light and atmosphere for a distance of more than 500 metres. The lack of visibility could be caused by matters including fog, smoke, rain, sand and sea spray.

Marine environment includes the environment as defined in section 528 of the **EPBC Act** in areas below the level of the highest astronomical tide that are saline and tide-affected.

Marine piling is driving structural supports into the ground below the waterline using weighted strikes.

Minister is the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and includes a delegate of the Minister.

New or increased impact is a new or increased impact on any matter protected by the controlling provisions for the action, when compared to the plan that has been approved by the **Minister**.

Observation zone is a 1250 metre horizontal radius from the pile hammer which must be visually observed at all times during **marine piling** to detect the presence of **whales**.

Soft start or soft start procedures are initiated at commencement of all **marine piling** activities by piling at low energy levels and then build up to full impact force. The first five impacts from the piling operation must be at no more than 50 per cent of full hammer weight (e.g. a hammer with an adjustable stroke height of 1.2 metres should drop a height of 0.6 metres at least 5 times during a 'soft start' procedure), to encourage animals to move away from subsequent blows.

South Australian Department of Environment, Water and Natural Resources is the current government department responsible for the protection of the environment and natural resources in South Australia, including any government department that assumes that role for the South Australian Government in future.

Southern right whale is the **EPBC Act** listed southern right whale (*Eubalaena australis*).

Spencer Gulf is the inlet in South Australia that spans from Cape Catastrophe to Cape Spencer and its boundary which, for this purpose, extends 3 nautical miles: west along the coast from Cape Catastrophe, east along the coast from Cape Spencer and seaward from the linear perimeter between the two capes.

Spencer Gulf Ecosystem and Development Initiative is the *Spencer Gulf Ecosystem and Development Initiative* or any subsequent program that aims to facilitate the sustainable economic development of **Spencer Gulf**, including by maintaining and improving its ecological integrity.

Suitably qualified expert (s) is a person who has demonstrated knowledge of **southern right whales** and demonstrated experience in scientific design.

Suitably qualified Marine Fauna Observer is a person trained in identification of key marine species and fauna behaviour that is trained in the use of binoculars, GPS, rangefinders and communication procedures.

Temporary threshold shift is the reversible hearing loss that results from exposure to intense impulse or continuous sound, as opposed to the irreversible permanent threshold shift that may result from such exposure.

Whale(s) is the **southern right whale** and any whale whose species cannot be identified.