

31 March 2017

Anthony Sutton
Director
Office of the Environmental Protection Authority
Locked Bag 33, Cloisters Square
PERTH WA 6850

Dear Anthony,

JACKSON 5 AND BUNGALBIN EAST IRON ORE PROPOSAL
Response To Submissions – ASSESSMENT NO: 2031
YOUR REF: CMS14148:AC01-2014-0178

MRL refers to your letter of 28 March 2017 regarding further Office of the EPA (**OEPA**) comments and Government agency and public submissions (together the **Submissions**) on the Public Environmental Review (**PER**) for MRL's J5 and Bungalbin East Project (**Proposal**).

The purpose of this letter is to request that the EPA move forward with its assessment of the Proposal. The Response to Submissions (**RtS**) process has extended for over 4 months. During this time MRL has used its best efforts to address all OEPA, agency and other stakeholder comments as comprehensively as possible. An adequate body of information exists to enable assessment of the Proposal. We therefore request that the EPA agrees to the finalisation of this stage of the process and to progress the section 44 report on the Proposal without further delay.

We will also take the opportunity to respond to the matters raised in your letter and the attached advice from other government agencies. None of MRL's responses here introduces additional information that would warrant updating the RtS document, but rather seeks to clarify matters raised, directs the OEPA towards existing information and reframes matters of opinion proffered by various government agencies.

MRL's response on these matters in respect to each environmental factor follows in the sections below.

Flora and Vegetation

Indirect impact buffer

MRL's response to issue number 1, including the information contained at Attachment 5, in the Response to Submissions Rev 1 provided to the OEPA on 3 March 2017 (**RtS**), provides a critical analysis of the adequacy of a 100% take of a 20m indirect buffer for indirect impacts. This analysis references relevant studies and includes a sensitivity analysis with consideration of a 5% take of a much larger buffer derived from the 4.2g/m²/month dust deposition contour. MRL concludes that the allowance for indirect impacts is more than adequate.

Staged approach

The purpose of the staged approach is clearly articulated in Attachment 1, "to further reduce the environmental impact in the early years of implementation and to incentivise exemplary progressive rehabilitation". The criteria for progressing from Stage 1 to Stage 2 are also clearly identified as: "satisfactory implementation of the Conservation Significant Species and Communities Management Plan (CSSCMP) throughout the life of Stage 1 mining, inclusive of:

- monitoring and reporting against trigger and threshold values for impacts to threatened and priority flora,
- implementation of required management responses;

- progressive achievement of the EPA's objective for rehabilitation and decommissioning in respect of Stage 1, being to ensure that the waste rock landform is progressively rehabilitated in an ecologically sustainable manner; and satisfactory implementation of an agreed offset package to counterbalance significant residual impacts."

Furthermore the CSSCMP contains specific, measurable, achievable, realistic and timebound objectives. MRL notes that it will be up to the Minister, on advice from the EPA, to determine which of these objectives warrant conditioning in the Ministerial Statement and to whose satisfaction they must be completed to. MRL expects that the CEO of the OEPA would be an appropriate custodian for the Minister to nominate.

Adequacy of CSSCMP and other management plans

MRL notes the non-specific feedback from the OEPA that the CSSCMP is "inadequate". MRL advises that the plan has been developed in conjunction with botanical and impact assessment expert Woodman Environmental Consulting and clearly provides a suitable framework for the management and monitoring of impacts. As with all of MRL's management plans, they will be subject to ongoing review and revision, which may include any specific feedback from government arising from the assessment. MRL sees very limited benefit in further revision of the management plans before this specific feedback is received.

*Impacts to *T.aphylla**

MRL advises that the impacts to *T.aphylla* have been addressed including detailed analysis of the genetic impacts reported in Appendix B. The significant residual impacts have been addressed through the comprehensive offsets package proposed.

Verification of recent survey results

MRL considers that DEE's view that "further independent verification of newly-identified individuals [of *T.aphylla* and *L.spectabilis*] is required or the Department will consider that these records are not validated" to be misguided. MRL reiterates that the survey methodology exceeds detailed and specific guidance from the relevant WA government agencies including:

- the engagement of expert consultants (7 of whom have PhD's in botany) over numerous field surveys across many seasonal conditions
- independent peer review by Associate Professor Grant Wardell-Johnson from Curtin University
- genetic analysis by Curtin University
- review by members of the public who happen to be expert botanists who are opposed to the project
- review by pre-eminent botanists within DPaW who have detailed specific knowledge of the HAR.

In none of the above reviews has anyone other than DEE raised potential misidentification or other problems with the dataset for *T.aphylla* or *L.spectabilis*. It is not the role of the WA herbarium or any other government department to validate every individual plant surveyed by MRL's consultants. MRL requests the EPA to explain the adequacy and appropriateness of the further surveys to the DEE. This is critical to ensure that the most up to date and relevant information is taken account of in the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) decision making process.

Interconnectedness and cumulative impacts

In terms of the cumulative impacts within and between factors raised by DPaW rather than between proposals, MRL has previously addressed this issue under the heading of "Holistic Considerations" in our correspondence of 3 March 2017.

As noted therein, the EPA's consideration of interconnectedness is not an additive concept due to that very interconnectedness.

Specifically in the context of cumulative impacts, the EPA guidance materials require a consideration of "cumulative impacts with other projects", but not cumulative impacts within a Proposal. Any cumulative impact consideration within an individual proposal, beyond consideration of the matters of interconnectedness, would be somewhat illogical due to that very interconnectedness. In all of the cases of interconnectedness between the factors, none of them create a level of

significance over and above that which is concluded for each individual factor in the PER nor to a level of unacceptability. MRL reiterates its view that that the EPA's objective in respect to all factors and at a holistic level can be met.

Landform

Ground Control Management Plans (GCMPs) are routinely applied in mining including at MRL's J4 and Iron Valley operations. In both of these cases, the GCMP's were introduced and applied post-*Mining Act 1978* approvals under the provisions of the *Mine Safety Inspection Act 1994*. MRL's commitments in regards to geotechnical stability and monitoring and staged risk based approvals are unequivocally stated in Attachment 1 to the RtS and there will be further discussion with DMP regarding these requirements as part of the secondary approvals for the Proposal.

Subterranean Fauna

Scope of work completed

The Environmental Impact Assessment put forward in the PER and RtS documents meets the requirements of the Environmental Scoping Document and includes subsequent work completed (as far as practicable) to the scope agreed with OEPA. The work is informed by the expert opinion of Stuart Halse from Bennelongia Environmental Consultants. MRL would welcome an independent peer review of the conclusions of the EIA.

Drilling for investigative works

In regards to options to apply for drilling either as a separate proposal or as investigative works, MRL does not consider this was a practicable option in the context of this Proposal. From as early as 2012, the then Conservation Commission and subsequently DPaW have openly opposed activities of this nature.

In November 2012, the Conservation Commission advised by email of its resolution not to support a Polaris Metals (subsidiary of MRL) exploration proposal on the Helena-Aurora Range within the MMHARCP. The Conservation Commission wrote to the EPA to advise them of its position at that time.

More recently in 2016, DPaW made the following comment on the draft PER "Gaining further information to address these issues [lack of sampling at J5 and Bungalbin East] would normally include recommendations for further surveys. However, it should be noted that Parks and Wildlife does not support drilling on the HAR for troglofauna surveys given the conservation values and significance of this area and the management purpose of the conservation park".

Further, MRL notes that a referral to extend pre-existing drilling at J5 by only 1.69ha for additional drilling was met with a PER level of assessment from the EPA. MRL considered and maintains this assessment approach was disproportionate to the level of impact. MRL subsequently withdrew that proposal and any plans to refer a drilling program at Bungalbin East, where in contrast to J5, threatened flora would actually be impacted.

In this context, it is highly unlikely that MRL could have obtained the EPA's consent to undertake such drilling as minor or preliminary work pursuant to section 41A(3) or otherwise obtained the necessary authorisations in an efficient manner, within the timetable set for assessment of the Proposal. This, coupled with a desire not to cause unnecessary environmental harm outside of the disturbance footprint for the Proposal, is why no program for minor or preliminary investigation works was submitted to the EPA by MRL.

MRL is also aware of the notorious difficulties in sampling subterranean fauna and is unconvinced that further investigations will produce a conclusive outcome that isn't going to still require some expert judgement from MRL's consultants and the EPA. Environmental impact assessment is inherently a predictive process, based on best available information. It is often the case that not all information that could potentially assist the assessment is feasible to obtain. The data and analysis on

subterranean fauna presented in the PER and RfS is the best available information on this Proposal and an appropriate foundation for assessment to proceed.

Terrestrial Fauna

In correspondence to MRL dated 2 February 2017, the OEPA requested that MRL provide a statement clarifying the number of species and identifying which species are restricted to the areas of impact and development envelope.

The PER and Bennelongia (2016) reported six potential SRE species recorded only within the disturbance area. This is not the same metric reported in the RtS, which identifies the total number of invertebrate species that were only recorded in the disturbance area (13). The fact that a species was only recorded in the disturbance area does not, by default, make it an SRE species.

The 13 invertebrate species recorded only from the disturbance area are sourced from both ecologia (2014) and Bennelongia (2016). This list of species includes:

- three species that are not considered SRE species, namely the pseudoscorpions *Beierolpium* 8/3 sp., *Indolpium* sp. B23 and *Indolpium* sp. B24 (Bennelongia, 2016; M. Curran pers. comm)
- three other indeterminate identifications, the centipedes *Sepedonophilus* sp. indet. and *Cryptops* sp. indet., and the spider *Karaops* sp. indet.
- The isopod *Armadillidae* 'EE1479S'

Further information in respect of the *Karaops* spider, the *Cryptops* centipede and *Armadillidae* 'EE1479S' is provided in Attachment 6 to the RtS. In respect of the *Karaops* and *Cryptops* specimens, it appears likely that they are *Karaops jarrit* and *Cryptops* sp. B45. In respect of *Armadillidae* 'EE1479S', it is expected that this species occurs outside the disturbance area.

The above information indicates that out of the 13 invertebrate species recorded only within the disturbance area, a total of eight are considered potential SREs. These eight potential SRE species include the original six species identified in the PER and Bennelongia (2016) as well as two species identified by ecologia (2014), namely *Sepedonophilus* sp. indet and *Armadillidae* 'EE1479S'.

Hydrological Processes and Inland Waters Environmental Quality

MRL advises that the update to the Surface Water Management Plan was intended to be included with the RtS at Appendix L. It is now provided attached to this letter. The changes are very minor in nature.

Amenity

Access to the MMHARCP

There appears to remain a common misconception that MRL's operations will result in access to and through the MMHARCP being restricted - one submitter even went to the trouble of drawing a nominal box which they believed to be an exclusion zone that would apply under the *Mine Safety and Inspection Act 1994*. MRL confirms in the RtS that this is not the case. Access will continue as it has into and through the MMHARCP as it has previously, both during and after the operational phase of the Proposal. Figure 10-3 of the PER identifies a proposed realignment of the Marda Track and the Closure of the local tracks that directly access (but don't traverse) the Bungalbin East deposit. Obviously local access to the immediate mining areas will be prohibited during operations, but the safety buffer required around the mines is relatively small at 500-1000m during blasting operations (depending on the specific blasting conditions). This exclusion zone will be controlled by blast guards for a maximum of 30 minutes on any particular day when blasting occurs.

Tourism demand

MRL does not share the view of DPaW that there is a latent demand for significant tourism and recreation potential over and above the levels that are evident through DPaW vehicle counts today

(340 vehicles per annum). These activities can continue during and after the mining operations with very little disruption other than a lack of access to the historical drilling tracks on J5 and at Bungalbin East.

Heritage

There are eight registered sites within the entirety of the MMHARCP, of which five (noting that two sites are duplicated in the AHIS 36948 and 18726) will be totally removed and two partially removed by the proposal – i.e. seven out of eight are planned to be impacted.

In regards to an Aboriginal Cultural Heritage Management Plan (ACHMP), MRL advises that there is a typographical error in this sentence; ‘are’ should be replaced with ‘will be’. The commitment made in the PER is that MRL will develop a Proposal specific ACHMP prior to the commencement of construction. This ACHMP will also incorporate the findings from the proposed archaeological investigations, should initial probing activities determine that they should be undertaken.

Per the requirements of the approved CALM Act Regulation 4 permit to conduct archaeological investigations in the MMHARCP, MRL has and will continue to keep DPaW informed of its intentions to conduct the investigations, and will also notify them of the outcomes. Due to delays to probing in March caused by weather, subsequent archaeological investigations may be conducted in as late as May 2017.

Rehabilitation and Decommissioning

MRL advises that its Rehabilitation and Mine Closure Plan (RMCP) does not seek to “restore” the environmental values of the Proposal area. The RMCP meets the requirements of the joint EPA/DMP guidelines for preparing these plans. MRL acknowledges that the Proposal will have a significant residual impact on the environment, particularly with regard to flora and vegetation. As such, MRL has proposed a comprehensive offsets package. Note that MRL’s rehabilitation plans include a target to reintroduce 10% of the *T.aphylla* impacted by the Proposal. MRL recognises the challenges in translocation and the guidance from DEE that translocation is considered to have a low likelihood of success. For this reason MRL will use best endeavours to achieve this target, but has not nominated this as an offset contrary to DPaW’s statement that MRL has favoured a “reliance in the reassessment on remedial actions to reverse the effect of the mining activities.” MRL’s preferred direct offset is the surrender of exploration tenure within the MMHARCP described in the PER, RtS and further discussed below.

Offsets

MRL has quantified the significant residual impacts of the proposal in the PER, the S43A Change to the Proposal and the RtS. To be clear 100% of the impacts identified as significant residual impacts are considered to be significant. The centrepiece of the offsets package is the surrender of MRL exploration tenure within the MMHARCP. This area hosts significantly more like-for-like environmental values than the within the Proposal area and is suitable for inclusion in the conservation estate.

MRL acknowledges that it alone cannot ensure the success of such an offset, which will ultimately be influenced by subsequent Government actions in respect to the surrendered area. A whole of government approach, including a will from the Ministerial level to make it happen, will be necessary to ensure protection of these environmental values in perpetuity. Surrender of exploration tenure by MRL is an important and necessary first step in achieving this outcome. MRL does not consider it appropriate for the value of the offset to be in any way diminished by the multifaceted Government response required post-surrender.

MRL also agrees with DMP’s statement that the proposed offset “appears inconsistent with the Government’s current proposed reserve status for the Mount Manning area” – i.e. the surrender of mining tenure within the MMHARCP would be inconsistent with the fact that mining is a valid land use. While that may be theoretically be the position, when this logic is played out in this context it becomes a circular argument. Mining tenure alone does not enable mining proposals to be

undertaken. Mining can only be lawfully undertaken to the extent that all relevant environmental approvals are in place. Rejecting this Proposal, for reasons including the unacceptability of this offset, will effectively sterilise mining on these tenements, and potentially also for any future mining proposals in the HAR.

MRL continues to support discussions at any time with relevant regulatory authorities to determine an offsets package that is suitable to the State of Western Australia.

DPaW further submission

MRL notes a range of other comments are made in the DPaW submission that, other than as expressly referred to above, we have not sought to address. These comments merely reiterate the numerous submissions that DPaW has previously made on the Proposal and, in MRL's view, do not advance the assessment. MRL considers its previous response to DPaW submissions adequately addresses the matters now raised.

Timing Remains Critical

I would like to once again take this opportunity to reinforce the importance of a timely EPA report for this project. MRL's existing operations in the Yilgarn region will come to a close in 2017. Without a timely outcome to the PER process, 1496 direct and indirect jobs throughout the WA economy will be lost, including 425 workers directly engaged in our operations. The ongoing total economic impact of the project to WA of \$611M per annum, including the \$67M paid directly to the WA government in FY2016 in royalties, taxes, charges, rates and port fees is also at risk.

We recognise your statement that acceptability of the RtS to OEPA is not a pre-requisite to the EPA moving forward to the next phase of the assessment, being the preparation of the EPA report. Based on this approach, we expect that today marks the start of the 12 week report preparation period defined in the ESD. We look forward to your confirmation in this regard.

Yours sincerely

A handwritten signature in black ink that reads "Sean Gregory".

Sean Gregory
Project Manager