



# Report and recommendations of the Environmental Protection Authority



## Cape Lambert to Emu Siding rail duplication and borrow pits in Millstream Chichester National Park - inquiry under section 46 of the *Environmental Protection Act 1986* to amend Ministerial Statement 918

Robe River Mining Co Pty Ltd

Report 1609

November 2017

ENVIRONMENTAL PROTECTION AUTHORITY  
REPORT AND RECOMMENDATIONS TO THE MINISTER FOR  
ENVIRONMENT

**CAPE LAMBERT TO EMU SIDING RAIL DUPLICATION AND BORROW  
PITS IN MILLSTREAM CHICHESTER NATIONAL PARK - INQUIRY UNDER  
SECTION 46 OF THE *ENVIRONMENTAL PROTECTION ACT 1986* TO  
AMEND MINISTERIAL STATEMENT 918 (ASSESSMENT NO. 2060)**

The Minister for Environment has requested that the Environmental Protection Authority (EPA) inquire into and report on the matter of changing the implementation conditions relating to the Cape Lambert to Emu Siding Rail Duplication and Borrow Pits in Millstream Chichester National Park proposal.

The following is the EPA's Report and Recommendations (Report No. 1609) to the Minister pursuant to section 46(6) of the *Environmental Protection Act 1986* (EP Act).

Section 46(6) of the EP Act requires the EPA Report to include:

- a) a recommendation on whether or not the implementation conditions to which the inquiry relates, or any of them, should be changed; and
- b) any other recommendations that it thinks appropriate.

## **Background**

The Cape Lambert to Emu Siding Rail Duplication and Borrow Pits in Millstream Chichester National Park proposal (the proposal) includes the approved rail line and eastern deviation and associated infrastructure adjacent to the existing rail line from Cape Lambert to Emu Siding. The seven borrow pits within the Millstream Chichester National Park are for use in the construction and maintenance of rail lines and associated infrastructure.

The EPA assessed the part of the proposal for construction and operation of the rail lines at the level of "Assessment on Proponent Information" (API) and released its assessment report (Report No. 1408) in July 2011. During this assessment the proposed borrow pits were removed in response to stakeholder consultation. The EPA identified the following key environmental factors relevant to the proposal:

- Flora and Vegetation; and
- Millstream Chichester National Park.

The Minister for Environment approved the proposal, subject to the implementation conditions of Ministerial Statement 880 (14 November 2011).

In order to provide for the development of borrow pit areas within the Millstream Chichester National Park (MCNP), the EPA undertook a further assessment of the revised proposal at the API level in October 2012 (Report No.1451).

In its assessment of the revised proposal, the EPA identified the following key environmental factors relevant to the proposal:

- Flora and Vegetation; and
- Visual Amenity.

In applying the Environmental Protection Authority *Statement of Environmental Principles, Factors and Objectives* (December 2016) these factors are now represented by:

- Flora and Vegetation; and
- Social Surroundings.

The EPA concluded in Report No. 1451 (October 2012), that “*the proposal, as described, can be managed to meet the EPA’s environmental objectives subject to the EPA’s recommended conditions being made legally binding*”.

The Minister for Environment approved the proposal for implementation subject to the implementation conditions of Ministerial Statement 918 (18 December 2012) which superseded Statement 880.

## **Requested changes to conditions**

In March 2015, the proponent, Robe River Mining Co Pty Ltd (a wholly owned subsidiary of Rio Tinto Iron Ore), requested amendments to condition 5 (Weeds) of Ministerial Statement 918 under section 46 of the EP Act for the removal of weed related implementation conditions for the rail duplication area outside the MCNP, in order to better protect the values of the conservation estate within the MCNP.

In response, the Minister for Environment requested (10 July 2015) that the EPA inquire into and report on the matter of changing implementation conditions for the Cape Lambert to Emu Siding Rail Duplication and Borrow Pits in Millstream Chichester National Park proposal (Ministerial Statement 918), in order to focus weed monitoring and management measures within the MCNP, and other environmentally significant areas.

The relevant factor relating to this change is “Flora and Vegetation”.

## **Application of relevant EPA policies and guidelines**

In inquiring into the change to conditions, the EPA has given due consideration to relevant published EPA policies and guidelines, noting that a number of published policies and guidelines pertaining to this proposal were considered but not determined to be relevant.

On 13 December 2016, the EPA released a new suite of environmental impact assessment policy and guidance documents.

This section 46 assessment was undertaken in accordance with the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2016*.

In its assessment, the EPA has considered and given due regard to, where relevant, its current environmental impact assessment policy and guidance documents (Appendix 1).

## **Inquiry into the requested change to conditions**

The EPA has a discretion as to how it conducts this inquiry. This inquiry has considered the EPA's initial assessment in Report No. 1408 and Ministerial Statement 880 (18 November 2011), as superseded by Report No. 1451 and Ministerial Statement 918 (18 December 2012) which are instructive in determining the extent and nature of the inquiry under section 46.

## **Inquiry findings**

In conducting this inquiry, the EPA reviewed the information provided by the proponent and advice from relevant decision making authorities.

In considering whether it should recommend that implementation condition 5 (Weeds) is changed, and to focus weed monitoring and management measures within the MCNP, and other environmentally significant areas, the EPA also considered whether there is any new relevant information in relation to the assessment of the potential impacts of the proposal.

### ***Flora and vegetation***

The EPA's objective for this factor is "*to protect flora and vegetation so that biological diversity and ecological integrity are maintained*".

In its initial assessment (Report No. 1408), the EPA noted that weeds were widespread throughout the proposed disturbance area and considered that appropriate management of weeds is an important factor for this proposal, with particular regard to the section of the rail duplication area within the MCNP.

The EPA's assessment (Report No. 1451) of the borrow pit areas within the MCNP identified that the proximity of the proposed borrow pits to the existing rail line and arterial road resulted in all borrow pits having some level of weed infestation with weed cover ranging from 15 to 77%. In its assessment (Report

No. 1451), the EPA considered that weed management was a priority for minimising the impacts to the values of the MCNP.

In 2011 the proponent conducted a baseline monitoring survey required by conditions 6-1(ii) and 6-1(iii) of Ministerial Statement 880 (replaced by condition 5 of Ministerial Statement 918 in December 2012). The baseline surveys and analysis identified six weed species including: kapok (*Aerva javanica*); buffel grass (*Cenchrus ciliaris*); birdwood grass (*Cenchrus setiger*); ulcardo melon (*Cucumis melo* subsp. *Agrestis*); speedy weed (*Flaveria trinervia*); and puslane (*Portulaca oleracea*) within the entire rail duplication area, including the MCNP and pastoral land.

The proponent's baseline monitoring data indicated that *Cenchrus* species accounted for 99% of all recorded cover within the rail duplication area. The EPA notes that buffel and birdwood grass have been used as pasture crops by pastoralists in the Pilbara.

The EPA also notes that a portion of the rail duplication corridor is located within the Harding Dam catchment area. The proponent's initial and updated baseline monitoring data indicates that pre-existing weed cover within the rail duplication area in the Harding Dam catchment area ranges from 0 to 50% at control sites and 0 to 30% at impact sites.

In undertaking its inquiry under section 46 of the EP Act, the EPA has assessed rail duplication areas for both the MCNP and the Rail Duplication Area outside the MCNP.

#### *Rail Duplication Area – Millstream Chichester National Park*

The proponent has requested a change to condition 5 of Statement 918 to enable it focus monitoring on the rail duplication area and borrow pits located within the MCNP.

Approximately 10 kilometres (km) of the 78 km rail duplication area and seven borrow pits occur within the MCNP.

In its assessment (Report No. 1451) of borrow pit areas, the EPA noted that the vegetation condition was very good to excellent in most areas, with creek lines having good to poor vegetation condition. No Threatened or Priority Ecological Communities or Declared Rare and Priority Flora were identified in the EPA's assessment of the borrow pit areas. The EPA originally considered that, given the high conservation values associated with flora and vegetation within the Park, any impact to flora and vegetation should be considered significant and mitigated as far as possible.

The EPA notes that the Department of Biodiversity, Conservation and Attractions was consulted with regard to the change to condition 5 (Weeds) of Ministerial Statement 918. The Department did not object to the proposed changes to condition 5 to focus weed monitoring and management measures within the MCNP.

*Rail Duplication Area – Outside Millstream Chichester National Park*

The proponent has requested to remove the requirement for weed monitoring within the rail duplication area outside the MCNP, and focus monitoring to the rail duplication area and borrow pits located within the MCNP.

In its initial assessment (Report No. 1408), the EPA noted that there were no Threatened Ecological Communities identified in the rail duplication area. The proponent's flora surveys indicate that two Priority Ecological Communities occur within the rail duplication area including the Roebourne Plains Coastal Grasslands and four plant assemblages of the Wona Land System. The vegetation within the rail duplication area is well represented in the region and not considered to be of high conservation significance.

Existing condition 5-1(1) requires that the proponent implement the proposal to ensure that "No new species of declared weeds and environmental weeds are introduced into the rail duplication area within the MCNP or other area of remnant vegetation and that the abundance and distribution of existing weeds is not increased as a direct or indirect result of implementation of the proposal".

The proponent has advised that its monitoring indicates that the portion of weed cover increase that is attributed to the implementation of the proposal is difficult to determine due to the proximity of the rail duplication area (outside the MCNP) to other potential sources of weeds, such as pastoral land, existing rail and road infrastructure and the potential for high rainfall events resulting in flood events.

The EPA notes that the existing adjacent rail and roads are located within the proponent's *Land Administration Act 1997* leases I123390 (Rail Line) and I123393 (Rail Access Road). The proponent has advised that these roads are also utilised by the general public.

The EPA's initial assessment (Report No. 1408) indicated that, while weeds were widespread, the proponent's previous weed management along the existing rail line had been inadequate. The EPA therefore recommended condition 5 to ensure that weeds were appropriately surveyed and managed during and following the construction of the rail line.

The construction of the rail duplication was complete in 2014, and as such, in accordance with existing condition 5-1(4), the proponent is required to undertake annual monitoring for two years after construction and then every two years for the life of the proposal. The proponent has undertaken targeted annual weed monitoring for two years post construction.

The EPA considers that effective management of weeds within the rail duplication area is required to prevent the spread of weeds along the proposal area particularly into the MCNP. However, the EPA acknowledges that other potential sources of weeds exist outside the rail duplication area.

The EPA recommends amended condition 5-1(2), requiring that the cover of existing weeds species at the impact sites within the rail duplication area,

outside the MCNP, does not show a statistically significant increase from baseline results and the corresponding control sites. Where a statistically significant increase is identified, and is attributed to the implementation of the proposal, it will trigger the implementation of weed management actions (recommended conditions 5-4 and 5-5).

The EPA recommends that weed monitoring be undertaken in accordance with recommended conditions 5-2 and 5-3 to confirm that there is no significant increase in weed cover within the rail duplication area.

The proponent has also requested that conditions 5-1(2) and 5-1(3) of Ministerial Statement 918 be removed as the requirements for baseline monitoring surveys along the rail duplication area have been fulfilled.

The EPA considers that the requirement for baseline weed surveys in existing conditions 5-1(2) and 5-1(3) have been completed and the conditions can be removed. However, the baseline data required by these conditions will be required to determine if there have been any adverse changes in weed cover and type as required under recommended condition 5-1(1).

## **EPA conclusions and recommendations**

### ***Conclusions***

In relation to the environmental factors, and in consideration of the information provided by the proponent and relevant EPA policies and guidelines, the EPA concludes that:

- the environmental factor, Flora and Vegetation, relating to the proposal has not changed significantly, nor have new factors been introduced since the EPA's initial assessment;
- weed management remains a priority for the proposal areas within the MCNP, this is particularly the case with borrow pits and 'turkeys nests' associated with the proposal, which are located within the MCNP;
- the proponent will need to ensure that there is no increase in weed cover, extent, and the invasive characteristics of weeds in the Rail Duplication Area and Borrow Pit Areas within the Millstream Chichester National Park as a result of implementation of the proposal;
- new recommended condition 5-1 is appropriate to ensure that no new species of declared and environmental weeds are established in the Rail Duplication Areas and Borrow Pit Areas located within the Proposal Area as a result of implementation of the proposal;
- the proponent has little control over potential sources of weeds outside the MCNP, such as pastoral land, existing rail and road infrastructure and impacts of high rainfall events; however, it is still important to manage the spread of weeds outside the MCNP to ensure that external weed impacts to the MCNP are minimised; and
- new recommended condition 5-1 is appropriate to ensure that the cover of existing weeds species at the impact sites within the rail duplication area, outside the Millstream Chichester National Park, do not show a statistically significant increase from baseline results and the corresponding control sites.

### ***Recommendations***

Having inquired into this matter, the EPA submits the following recommendations to the Minister for Environment; that it is appropriate to, under section 46 of the EP Act:

1. Amend condition 5 of Ministerial Statement 918 in order to allow the proponent to better focus weed management and monitoring activities as a result of implementation of the proposal; and
2. That after complying with section 46(8) of the EP Act, the Minister issues a statement of decision to change condition 5 of Ministerial Statement 918 in the manner provided for in the attached recommended statement (Appendix 2).



Table 1 – Relevant EPA Policies and Guidelines

Process/ Factor/s	Policies and guidelines considered relevant	Applied Yes/No	Comments
Change to conditions	<i>Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2016</i>	Yes	<p>The Administrative Procedures provides the practices around the environmental impact assessment process undertaken by the Office of the Environmental Protection Authority under Part IV of the EP Act.</p> <p>Relevantly, section 5.4 of the Administrative Procedures provide guidance on the process for changing conditions under section 46 of the EP Act.</p>
Change to conditions	<i>Environmental Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual, (December 2016)</i>	Yes	<p>The Procedures Manual supports the Administrative Procedures and contains more detailed information on each step of the EIA process, including section 46 changes to conditions, under stage 5.4.</p> <p>More relevantly, stage 5.4 details the process for changing implementation conditions.</p>
Change to conditions	<i>Statement of Environmental Principles, Factors and Objectives (December 2016) (SEPFO)</i>	Yes	<p>Relevantly, the SEPFO:</p> <ul style="list-style-type: none"> <li>• considers the object and principles of the EP Act;</li> <li>• uses environmental factors and objectives to organise and systemise environmental impact assessment and reporting;</li> <li>• takes a holistic view of the environment and a proposal or scheme’s potential impact on the environment; and</li> <li>• considers significance when determining whether or not to assess a proposal or scheme and recommend whether or not an assessed proposal or scheme may be implemented.</li> </ul> <p>In this case the SEPFO was applied in:</p> <ul style="list-style-type: none"> <li>• confirming the key environmental factors identified for the original assessment in the current policy context;</li> <li>• determining whether the identified environmental factors are still relevant and if any new factors should be considered; and</li> <li>• preparing advice on whether the EPA’s environmental objectives can be met.</li> </ul>

Process/ Factor/s	Policies and guidelines considered relevant	Applied Yes/No	Comments
Flora and Vegetation	Environmental Factor Guideline – <i>Flora and Vegetation</i> (December 2016)	Yes	<p>The purpose of this guideline is to outline how the factor Flora and Vegetation is considered by the EPA in the environmental impact assessment process.</p> <p>In considering the change to conditions, this guideline was applied when defining and identifying the environmental values for the factor Flora and Vegetation.</p> <p>Relevantly this guideline was applied with regard to:</p> <ul style="list-style-type: none"> <li>• application of the mitigation hierarchy to avoid or minimise impacts on flora and vegetation, where possible;</li> <li>• the flora and vegetation affected by the proposal;</li> <li>• the potential impacts as a result of the proposed change, including direct and indirect impacts;</li> <li>• the implications of cumulative impacts as a result of other adjacent land uses;</li> <li>• the risk to the flora and vegetation within the Millstream Chichester National Park; and</li> <li>• whether proposed management and mitigation approaches are technically and practically feasible.</li> </ul> <p>The proponent has requested a change to condition 5 relating to weeds to focus its management and monitoring efforts to the Rail Duplication Area that exists within the Millstream Chichester National Park. This guideline was applied to determine whether it is appropriate for weed monitoring to cease in areas outside the Millstream Chichester National Park and other areas of significant conservation value that could be subject to non-project attributable sources of weeds.</p>

Statement No. XXXX

RECOMMENDED ENVIRONMENTAL CONDITIONS

**STATEMENT TO CHANGE THE IMPLEMENTATION CONDITIONS APPLYING TO  
A PROPOSAL  
(Section 46 of the *Environmental Protection Act 1986*)**

CAPE LAMBERT TO EMU SIDING RAIL DUPLICATION AND BORROW PITS IN  
MILLSTREAM CHICHESTER NATIONAL PARK

**Proposal:** The proposal includes the approved rail line and eastern deviation and associated infrastructure adjacent to the existing rail line from Cape Lambert to Emu Siding. The seven borrow pits within Millstream Chichester National Park are for use in the construction and maintenance of rail lines and associated infrastructure located within Millstream Chichester National Park.

**Proponent:** Robe River Mining Co Pty Ltd  
Australian Company Number: 008 694 246

**Proponent Address:** 152-158 St Georges Terrace, PERTH WA 6000

**Report of the Environmental Protection Authority:** 1609

**Previous Assessment Numbers:** 1892, 1937

**Previous Report Numbers:** 1408, 1451

**Preceding Statements Relating to this Proposal:** 880, 918

Pursuant to section 45 of the *Environmental Protection Act 1986*, as applied by s 46(8), it has been agreed that implementation conditions set out in Ministerial Statement No. 918, be changed as specified in this Statement.

**Condition 5 is deleted, and replaced with:**

**5 Weeds**

- 5-1 The proponent shall manage the implementation of the proposal to ensure that:
- (1) no new species of declared and environmental weeds are established in the Rail Duplication Areas and Borrow Pit Areas located within the Proposal Area as a result of implementation of the proposal;
  - (2) the cover of existing weeds species at the impact sites within the rail duplication area, outside the Millstream Chichester National Park, shall not show a statistically significant increase from baseline results and the corresponding control sites as identified in the *Cape Lambert to Emu Siding Rail Duplication – Proposed Monitoring Site Re-installation and Update to the Baseline Weed Monitoring Survey Report, May 2014*, or other control and impact sites agreed by the CEO; and
  - (3) there is no increase in weed cover, extent, and the invasive characteristics of weeds in Rail Duplication Area and Borrow Pit Areas within the Millstream Chichester National Park as a result of implementation of the proposal.
- 5-2 The proponent shall, undertake weed monitoring within the Proposal Area at the following frequency:
- (1) annually for two years from the date of this statement and then every two years within the Rail Duplication Areas, unless otherwise agreed in writing by the CEO; and
  - (2) annually for Borrow Pit Areas in the Millstream Chichester National Park in accordance with the approved *Borrow Pit Weed Management Plan, (July 2016)* or any subsequent approved revisions as agreed by the CEO, on advice of the Department of Biodiversity, Conservation and Attractions.
- 5-3 The weed monitoring referred to in condition 5-2, shall be undertaken:
- (1) at weed monitoring sites identified and surveyed in the approved *Cape Lambert to Emu Siding Rail Duplication – Proposed Monitoring Site Re-installation and Update to the Baseline Weed Monitoring Survey Report, May 2014*, or as otherwise agreed by the CEO; and
  - (2) in accordance with the approved *Borrow Pit Weed Management Plan, (July 2016)*, or any subsequent approved revisions as agreed by the CEO, on advice of the Department of Biodiversity, Conservation and Attractions.
- 5-4 Where the results of monitoring under condition 5-2 indicates that condition 5-1 is not being met, the proponent shall:
- (1) report the monitoring findings to the CEO within 28 days of becoming aware that condition 5-1 is not being met;

- (2) implement mitigation actions to the satisfaction of the CEO; and
- (3) where mitigation actions in condition 5-4(2) relate to Rail Duplication Areas and Borrow Pit Areas within the Millstream Chichester National Park, mitigation measures shall be undertaken in accordance with the approved *Borrow Pit Weed Management Plan (July 2016)*, or any subsequent approved revisions.

5-5 The proponent shall continue to implement the mitigation actions required by condition 5-4(2), until the CEO has confirmed by notice in writing that the mitigation actions are no longer required.

“CEO” means the Chief Executive Officer of the Department of the Public Service which is responsible for the administration of section 48 of the *Environmental Protection Act 1986*, or his delegate.

“Proposal Area” means the area defined in Figure 1 of Schedule 1 of Ministerial Statement 918.

“Rail Duplication Areas” means the area defined in Figure 2 and Figure 3 of Schedule 1 and the coordinates in Schedule 2 of Ministerial Statement 918.

“Borrow Pit Areas” means the areas defined in Figure 4 of Schedule 1 of Ministerial Statement 918 and the coordinates for “Borrow Pit Areas” in Schedule 2 of Ministerial Statement 918.

Hon Stephen Dawson MLC  
**MINISTER FOR ENVIRONMENT**