CENTRAL LAND COUNCIL

Environment Policy – Mining Reforms **CLC Ref: D25-50906**

Department of Lands, Planning and Environment
GPO Box 3675
Darwin, NT 0801
mineralinfo.dlpe@nt.gov.au

1 August 2025

SUBJECT: Central Land Council comments on draft revised declared risk criteria and approved standard conditions for exploration and extractive operations – Environmental (Mining) Licence

To whom it may concern,

The Central Land Council (**CLC**) is pleased to provide feedback on the revised risk criteria and standard conditions for exploration and extractives – Environmental (mining) License.

It is encouraging to see further development on this new framework continue, particularly with regard to provision of additional detail, definition of key terms, and reference to legislation and regulatory frameworks; providing improved clarity on requirements of operation. The CLC welcome these improvements, and again raise concerns that the development of this framework must not come at the expense of the rights and interests of Aboriginal Territorians and their traditional lands, who bear a significant cultural and spiritual risk.

In our joint CLC and Northern Land Council (**NLC**) (the **Land Councils**) submission of 10 October 2023, the Land Councils expressed concern that, amongst other things, the new framework does not provide for the adequate consideration and involvement of Aboriginal Territorians[1]. In our joint submission of 17 July 2024, responding to draft risk criteria and standard conditions, the Land Councils further expressed concern over the lack of consideration and involvement of Aboriginal Territorians[2].

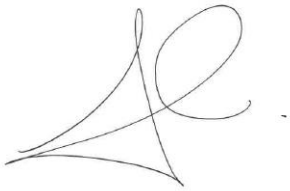
In this submission the CLC provides comments on the draft revised risk criteria and standard conditions for exploration and extractive operations proposed by the Northern Territory Government (**NTG**). This submission is structured in two parts. **Part I** outlines general comments about the proposed revisions. Specifically, the CLC reiterates our previous submissions comments on consultation with traditional owners and Aboriginal communities, the importance of clear definitions, our request for details of risk assessment methods, and concerns pertaining to adequate resourcing for monitoring and compliance. **Part II** provides feedback on specific aspects of the draft

[1] CLC and NLC Joint submission on the Environment Protection Legislation Amendment (Mining) Bill 2023 and Legacy Mines Remediation Bill 2023 - 10 October 2023.
[2] CLC and NLC Joint submission on Draft Risk Criteria and Standard Conditions – Environmental (Mining) License – 17 July 2024.

revised risk criteria and standard conditions for exploration and extractive operations.

In our previous submissions we invited the NTG to collaborate with the Land Councils to ensure this legislation has broad support and is thoroughly understood prior to its implementation. The CLC again reiterates this invitation through this submission.

Yours sincerely,



SHAUN O'CONNOR
MANAGER, MINERALS & ENERGY
CENTRAL LAND COUNCIL

I. GENERAL COMMENTS

The CLC would like to draw your attention to concerns raised in a joint CLC and NLC submission on the Environment Protection Legislation Amendment (Mining) Bill 2023 (**EP Bill)** on 10 October 2023. In that submission the Land Councils highlighted a number of concerns in relation to the EP Bill[3], which are reiterated, namely:

- the inadequate involvement of Aboriginal Territorians;
- the missed opportunity to introduce comprehensive reforms in relation to sacred site protections, improved public reporting, greater transparency and consultation on applications for mining licenses, best practice progressive rehabilitation and chain of responsibility reforms; and
- concerns the reforms will not substantially improve regulation and environmental protection, particularly if DEPWS is inadequately funded to undertake compliance and enforcement actions.

On 17 July 2024 the Land Councils made a joint submission on the Draft Risk Criteria and Standard Conditions for Exploration and Extractive Operations[4], and would like to draw your attention to a number of concerns raised in relation to the draft, which CLC reiterates, including:

- The risk criteria must acknowledge Aboriginal Territorians' significant cultural and spiritual connection to country.
- Traditional Owners[5] (**TOs**) should be given the opportunity to comment on standard environmental license
- The NTG has not provided enough detail on the risk assessment process.
- Clear definitions are needed to avoid leaving decisions to the discretion of operators.
- There provisions for mining operator self-assessment must be minimised.
- There must be sufficient resources for monitoring and compliance.

II. SPECIFIC FEEDBACK – RISK CRITERIA AND STANDARD CONDITIONS – EXPLORATION AND EXTRACTIVE OPERATIONS

1. INTRODUCTION

1.1 RISK CRITERIA

If a ***mining operator*** can operate within the constraints set out in the risk criteria, the ***mining***

[3] CLC and NLC Joint submission on the Environment Protection Legislation Amendment (Mining) Bill 2023 and Legacy Mines Remediation Bill 2023 - 10 October 2023, sections 3.1 - 3.4, 3.7, 3.8, 3.13 - 3.15.
[4] CLC and NLC Joint submission on Draft Risk Criteria and Standard Conditions – Environmental (Mining) License – 17 July 2024.
[5] The use of the term 'Traditional Owners' is used to include all types of Aboriginal land owners including traditional Aboriginal owners as defined in the Land Rights Act and native title holders as defined in the *Native Title Act 1993* (Cth).

operator is eligible for a standard or modified condition licence. If a ***mining operator*** cannot operate within the constraints set out in the risk criteria, the ***mining operator*** must apply for a tailored condition licence.

If a ***mining activity*** does not meet all the risk criteria, a ***mining operator*** may consider reducing the scale of activities, excluding activities, or redesigning activities so that the ***mining activity*** will meet the risk criteria.

The risk criteria are declared under the EP Act and are to be construed having regard to the EP Act and other relevant legislation.

The CLC support this principle. However we are concerned with its practical implementation. Specifically:

a. The NTG must ensure that there is sufficient regulation and oversight of the industry to ensure compliance. The NTG must not rely on self-reporting from operators. Either the NTG or the CLC must be adequately resourced and skilled to be able to monitor compliance. The capacity of monitoring and compliance institutions must reflect the growth of the number of operators in the NT and the scale of exploration and mining being undertaken.
b. The risk criteria must be regularly updated to reflect current best practice.
c. The risk criteria must be clearly defined, comprehensive, and accessible. This includes linking the risk criteria to relevant legislation (for instance, for definitions). This will help reduce the risk of non-compliance.
d. The CLC is concerned that there is no indication as to how risk will be assessed. The NTG must provide this detail and make provisions for public consultation on the method of risk assessment.
e. There must be clear pathways for members of the public, particularly Aboriginal Territorians, to report on non-compliance.

1.2 STANDARD CONDITIONS

The standard conditions specify the outcomes which must be achieved when carrying out exploration under a standard condition licence. If the ***mining activity*** is unable to be carried out in accordance with the standard conditions, a modified or tailored condition licence will be required to undertake the activities.

The standard conditions are approved under the EP Act and are to be construed having regard to the EP Act and other relevant legislation.

1.3 STANDARD LICENCE APPLICATION

If the ***mining activity*** can meet all risk criteria, a standard licence application can be made for a licence that is subject to all standard conditions.

Applicants are required to complete the application form:

- Exploration mining licence application form – Standard condition licence.

1.4 MODIFIED LICENCE APPLICATION

If the ***mining activit***y can meet all the risk criteria, but one or more of the standard conditions needs to be varied to suit the operational needs of the applicant (whilst addressing the site-specific environmental risks), an application can be made for a licence that is subject to modified

conditions.

Applicants are required to complete the application form:

- Exploration mining licence application form – Modified condition licence.

Applicants are required to conduct a Risk Assessment relating to each condition proposed to be modified and to submit the risk assessment form/s with the application.

1.5 Tailored licence application

Activities which cannot meet all the risk criteria must be the subject of a tailored condition licence.

Applicants are required to complete the application form:

- Exploration mining licence application form – Tailored condition licence.

Applicants are required to complete and submit relevant attachments to the application form.

1.6 Application forms

Application forms can be downloaded from the Northern Territory's website at: Apply for an environmental (mining) licence | NT.GOV.AU

1.7 Non-compliance

Failure to comply with any licence condition or part thereof is an offence under the EP Act and subject to penalties.

The CLC submits that:

a. The NTG must set out a clear plan for monitoring and compliance. There must be a mechanism for communities, particularly Aboriginal communities, to be able to raise concerns.

1.8 Reporting

All items required to be submitted to the department in accordance with any obligation or condition must be submitted to the Mining Division by emailing: mineralinfo.dlpe@nt.gov.au

For further information contact the Mining Division on (08) 8999 6528

The CLC submits that:

a. There should be a clear pathway for members of the public, particularly Aboriginal Territorians, to report concerns and non-compliance.

1.9 Definitions

All ***bold+italicised*** terms are defined along with other industry terminology used in the risk criteria and standard conditions.

Defined terms are at section 5 of this document.

2. OBLIGATIONS OF MINING OPERATOR

2.1 General obligations

1. A ***mining operator*** of a ***mining site*** must:

(a) prevent or minimise environmental impacts in the establishment, operation, ***care and maintenance*** and closure of the mining site; and

(b) design, maintain, operate, decommission remediate and rehabilitate structures and facilities on the ***mining site*** in a manner that minimises environmental impacts; and

(c) maintain and operate structures and equipment erected or installed at the ***mining site*** to a standard that enables their proper and efficient use so as to minimise environmental impacts; and

(d) during any ***care and maintenance*** period for the mining site, maintain structures and facilities and implement an appropriate program of maintenance to ensure that structures and facilities do not cause environmental impacts.

2.2 NOTIFICATION OF COMPLETION OF MINING ACTIVITY

2. The ***mining operator*** must notify the Minister of the completion of the mining activity within 30 business days after the mining activity is completed. The notice must:

(a) be submitted to the department; and

(b) be in an approved form; and

(c) be accompanied by a final report setting out: i. the mining activities undertaken; and

ii. the environmental impacts associated with the mining activities; and

iii. the remediation and rehabilitation activities completed as part of the mining activity; and

iv. the post-closure monitoring, management and reporting of the mining site undertaken under the environmental (mining) licence.

3. The notice may request the Minister to cancel the environmental (mining) licence.

2.3 IMPLEMENTATION OF MANAGEMENT SYSTEM

4. The ***mining operator*** must:

(a) establish and maintain an appropriate management structure of competent persons for the site; and

(b) as far as practicable, ensure that workers on the site are competent to perform their duties; and

(c) establish, implement and maintain an environment protection management system that is appropriate to the nature, scale and environmental impacts of the mining activity being carried out on the site; and

(d) provide adequate resources for the implementation and maintenance of the environment protection management system; and

(e) ensure, by regular assessment, that the environment protection management system operates effectively.

5. For subsection (4)(c), an environment protection management system for an activity on a ***mining site*** must comply with the requirements prescribed by regulation.

6. The operator of a ***mining site*** must display in a prominent place on the site any environmental approval or environmental (mining) licence applying to the activity site and make the approval or

licence available to a contractor or worker on request.

2.4 NOTIFICATION OF NOTIFIABLE INCIDENTS

7. A ***mining operator*** who observes or becomes aware of a notifiable incident must submit written notification of the incident to the department:

(a) as soon as practicable (and in any case within 24 hours) after the person observes or becomes aware of the incident; and

(b) in the approved form detailing all the prescribed information about the incident.

The CLC submits that:

a. There should be a clear pathway for members of the public, particularly Aboriginal Territorians, to report concerns and non-compliance.

3. RISK CRITERIA

1. The ***mining activity*** does not have a ***significant impact*** on the environment.

2. The ***mining activity*** does not cause any of the following:

i. ***substantial disturbance*** of more than 10 hectares (10ha), including access tracks used for the ***mining activity***;

ii. the excavation of more than 1,000 tonnes (1,000t) of material, excluding drilling and excavation of ***bulk samples.***

3. The ***mining activity*** is not located in and does not impact any of the following:

i. a Commonwealth reserve as defined in section 528 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth);

ii. an area on the Park under the *Nitmiluk (Katherine Gorge) National Park Act 1989* (NT);

iii. a sanctuary or marine park as defined in section 3 of the *Coburg Peninsula Aboriginal Land, Sanctuary and Marine Park Act* 1981 (NT);

iv. a declared protected environmental area under the Environment Protection Act 2019 (NT) where the declaration specifies the prohibition of ***mining activity***; or

v. an area the subject of a declaration of prohibited action under the Environment Protection Act 2019 (NT) relating to ***mining activity***.

4. The ***mining activity*** does not cause any of the following except in accordance with a permit to ***interfere with a waterway*** issued under the Water Act 1992:

i. a material change to the shape of a waterway;

ii. a ***material change*** to the volume, speed or direction of the flow or likely flow of water in or into a ***waterway***;

iii. an alteration to the stability of the bed or banks of a ***waterway***, including by the removal of vegetation.

5. The ***mining activity*** must not involve the discharge of any ***waste*** to water except in accordance with a ***waste discharge licence*** issued under the Water Act 1992.

The CLC submits that:

a. There needs to be sufficient resources for monitoring and compliance.
b. The risk criteria need to be updated to reflect best practice.
c. More clarity is needed about how risk is assessed.
d. NTG consider community expectations, leading practice, and the potential for groundwater connectivity to aquifers, and that section 3 (4) include that the mining activity does not interfere with, or impact, groundwater.
e. The NTG, in partnership with the CLC, must clearly communicate the areas that are off limits to exploration and mining. As highlighted above there must also be resources for monitoring and compliance.
f. This list should be expanded to include reserve blocks and proposed reserve blocks, as well as relevant buffer zones.

4. STANDARD CONDITIONS

4.1 GENERAL CONDITIONS

1. The environmental (mining) licence is in force for the period of the mining activity.

2. The ***mining activity*** must not be inconsistent with the risk criteria.

3. The ***mining activity*** must not be located in and must not impact any of the following:

(a) an area of land declared to be a park or reserve under either section 9(4), section 12 or section 24 of the *Territory Parks and Wildlife Conservation Act 1976*;

(b) an area of land managed under either section 73 or section 74 of the *Territory Parks and Wildlife Conservation Act 1976*;

(c) land held by the Conservation Land Corporation;

(d) a ***site of conservation significance***.

4. The ***mining operator*** must ensure that appropriate enquiries are made to enable the accurate identification of natural, cultural and/or built features for the purpose of exclusion and buffering to reduce the risk of negative impacts from the ***mining activity***.

5. The ***mining activity*** must not:

(a) be within 1,000m of a residence or community;

(b) have traffic, noise, dust, light, nuisance or other impacts on a residence or community.

The CLC acknowledges the benefits of the current drafts inclusion of references to applicable legislation and regulatory frameworks, leading practice handbooks, and guidance notes. The CLC supports this development, and submit that this continues. Specifically:

a. In section 4.1(4), the NTG include references to specific organisations which will ensure appropriate enquiries are made. This should include reference to Land Councils.
b. In section 4.1(5), the NTG include a reference to the Commonwealths Department of Industry, Science and Resources leading practice handbooks for sustainable mining, specifically, Working with Indigenous Communities.
c. The NTG should consider increasing the prominence of this series *Leading Practice Sustainable Development Program for the Mining Industry* throughout the guidance notes provided within the exploration and extractives risk criteria and standard conditions.

4.2 OPERATIONAL CONDITIONS

6. The ***mining activity*** must be carried out in accordance with ***leading practice***.

7. The mining activity must implement appropriate mitigation measures to minimise traffic, noise, dust, light or other impacts on ***wildlife***.

8. The ***mining activity*** must not disturb any of the following:

(a) a ***legacy mine site***;

(b) a ***legacy mine feature***;

(c) existing or rehabilitated mining-related engineered landforms containing waste or water (e.g. tailings storage facilities, waste rock dumps, water management dams).

9. ***Bulk samples*** must not exceed 1,000 tonnes (1,000t) per individual sample.

10. The ***mining activity*** must not involve any of the following:

(a) excavations, excluding drilling and ***bulk samples*** (provided the ***bulk samples*** are backfilled immediately), more than 2m in depth from the ***natural surface of the land***;

(b) ***blasting***;

(c) ***dredging.***

11. If the ***mining activity*** involves ***uranium or naturally occurring radioactive materials*** (NORMs), the ***mining operator*** must hold and implement a radiation management plan, developed by a suitably qualified professional in accordance with the applicable Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) guidelines.

12. The use, storage and disposal of:

(a) fuel;

(b) chemicals;

(c) drilling fluids;

(d) intercepted or contaminated groundwater;

(e) intercepted or contaminated surface water; and

(f) any drill cuttings or samples which may produce ***acid or metalliferous drainage***, must meet each of the following requirements:

(g) be in accordance with relevant Australian Standards, codes and/or guidelines; and

(h) it does not result in any ***environmental harm***.

The CLC submits that:

a. Regarding section 4.2 (10) (a), the NTG must provide a clear definition of the 'natural surface' of the land. This should be linked to specific definitions provided in legislation. The NTG should consider providing a process that operators must follow to identify the pre-excavation elevation. This should include a requirement that the operator submit photographic evidence of the excavation area before and after that illustrates clearly the removal of earth is equal to or less than two meters.
b. Furthermore, even at this level, there may be difficulties in restoring streams and natural drainage channels. This may, for instance, limit the choice of Aboriginal landowners for preferred post-closure landforms and vegetation. The NTG should consider limiting

excavation activity to higher tiers of environmental licences to ensure that Aboriginal landowners have the opportunity to be consulted prior to disturbance.

c. Environmental harm (12.h) has no definition included in section 5.
d. With the inclusion of a definition for natural surface of the land, details are required on how this is to be established, specifically, this would require spatial data (x, z and z values) and photographs.
e. Within the extractive operations risk criteria and standard conditions, section 4.2 (12) includes (f) it does not cause habitat fragmentation. The NTG must provide more clarity around the decision to exclude habitat fragmentation from exploration standard conditions.

4.3 CLEARING OF NATIVE VEGETATION CONDITIONS

13. Any ***clearing of native vegetation*** associated with the ***mining activity*** is subject to the following requirements:

(a) the extent of ***clearing of native vegetation*** (including grasses, trees and shrubs) is minimised as much as reasonably practicable;

(b) it responds to the land capability and suitability for the intended activity (e.g. with respect to siting of tracks/roads and infrastructure);

(c) it does not negatively impact highly erodible soils;

(d) it keeps surface disturbance as low as reasonably practicable;

(e) it responds to the presence of threatened wildlife and essential habitats within the meaning of the *Territory Parks and Wildlife Conservation Act 1976*;

(f) it responds to the presence of threatened species/ communities and critical habitat listed under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*;

(g) it does not cause impacts on ***native vegetation*** that has been retained as a ***wildlife corridor***;

(h) it minimises impacts to ***drainage depressions*** and first order ***streams***;

(i) it does not impact on trees with a diameter greater than 40cm at 1.3m from the base of the tree (i.e. ground level).

14. Any ***clearing of native vegetation*** associated with the ***mining activity*** is subject to the following requirements:

(a) it responds to the presence of sacred sites within the meaning of the Northern Territory Aboriginal Sacred Sites Act 1989;

(b) it responds to declared heritage places and archaeological sites within the meaning of the Heritage Act 2011.

15. The ***mining activity***, including any associated ***clearing of native vegetation***, must not occur within or impact on the following buffers (to be measured from the outer most extent of associated ***sensitive/significant vegetation*** and not the feature's centre):

(a) second order ***streams***: 50m

(b) third and fourth order ***streams***: 100m

(c) fifth, sixth and seventh order ***streams***: 250m

(d) ***wetlands***: 250m

(e) wet/dry rainforest, monsoon vine forest, vine thicket: 250m

(f) mangroves: 250m

(g) sandsheet heath: 250m

(h) aboveground ***caves***: 250m

(i) closed sinkholes: 250m

(j) underground ***caves***: 500m

(k) open sinkholes: 500m

(l) springs: 500m

(m) ***groundwater dependent ecosystems*** (other): 250m

The CLC submits that:

a. No trees that have a diameter greater than 40cm at 1.3m high should be cleared, regardless of whether they contain suitable habitat for fauna. In section 4.3 (13) (i) the NTG should provide further explanation as to how this threshold was determined, and why it increased from 1.2m to 1.3m.
b. The NTG should consider introducing a simple approvals process prior to any trees being destroyed. This ensures that the CLC and the NTG could evaluate the cultural and ecological value of trees prior to their destruction. Some trees are ecologically significant even at a smaller size than the threshold provided, such as the desert walnut (Owenia reticulata) and quandong (Santalum acuminatum). Large trees are often culturally significant to Aboriginal people and should not be destroyed without the consent of TOs.
c. Regarding section 4.3 (14) guidance notes, the NTG must include reference to the Land Councils, along with Heritage Branch, DLPE and the Aboriginal Areas Protection Authority.
d. The NTG must provide clarity around the weakening of environmental protections within 4.3 (15), specifically, why buffer zones have been reduced, including for closed sinkholes, and why first order streams no longer have the protection of a buffer zone at all. These changes do not manage the risk associated with the development of gully erosion. Specifically, the 250m buffer from riparian vegetation may not be effective without an assessment of the erosion potential. Without this assessment, a mining activity operating outside of a riparian zone has the potential to materially impact the riparian zone, as well as causing material change to beds and banks of a waterway.
e. The NTG should consider the interplay between the revised draft standard conditions and risk criteria, to ensure effective delivery of the intent. For example, the interaction between draft risk criteria, section 3 (4), and draft standard conditions section 4.3 (15), as it does not manage the risk associated with the development of gully erosion. Specifically, the differing stream buffers (from riparian vegetation) may not be effective without an assessment of the erosion potential. Without this assessment, a mining activity operating outside of a buffer zone has the potential to materially impact the riparian zone, as well as causing material change to beds and banks of a waterway.
f. The NTG should mandate the reporting of caves, sinkholes (open and closed) and springs, including to the Land Councils.
g. The NTG needs to clarify how sections 4.3 (13 & 15) will be regulated to mitigate the risk of non-compliance.
h. The CLC and TOs need to be consulted prior to any vegetation being cleared. This will prevent culturally or spiritually significant flora from being damaged.

4.4 SOIL, SURFACE WATER AND GROUNDWATER CONDITIONS

16. Where soil disturbance occurs as a result of a ***mining activity***:

(a) topsoil quality must be maintained for subsequent use in rehabilitation; and

(b) topography (landform slope) must be reinstated to a state as similar to the pre-disturbance state as is reasonably practicable.

17. The ***mining activity*** must be carried out in such a manner that it:

(a) prevents a change to surface water quality (including surface water runoff not captured within the mining site) having a detrimental effect on the environment as a result of contamination, sedimentation or inundation caused by the ***mining activity***; and

(b) minimises the risk of erosion (sheet, rill, gully, tunnel, wind) within the mining site and surrounding land.

18. Where multiple aquifers are encountered, the ***mining activity*** must be carried out in a manner which ensures that waters of different aquifers do not mix.

19. The ***mining activity*** must not involve ***dewatering***, except in accordance with a water extraction licence issued under the *Water Act 1992* prior to 31 August 2025.

The CLC submits that:

a. The NTG reinstate the requirement for the soil profile to a state similar to the pre-disturbance state in section 4.4 (16.b). The NTG must ensure that operators measure the baseline topsoil quality prior to disturbance in order to ensure it is reinstated to a similar state. The NTG must set out penalties for operators who fail to return the topsoil to the pre-disturbance state.
b. The NTG must define the parameters of what it means to be 'similar' to the pre-disturbance state, and include this in section 5 (Definitions).
c. The NTG must require operators to establish baseline groundwater conditions prior to any disturbance and adhere to industry best practice in consistent monitoring of groundwater conditions. The CLC must be involved in the process of establishing baseline conditions and any mechanisms to protect groundwater.
d. This section (4.4) must increase the prominence of the series *Leading Practice Sustainable Development Program for the Mining Industry*, including throughout the guidance notes provided within the exploration and extractives risk criteria and standard condition.
e. The NTG should consider mandating the use of filter dams where the slope of the land presents a risk that site soil or other materials could be carried away by rainwater or onsite spills.
f. Activity that has the potential to impact waterways should require consultation with communities through the Land Councils.
g. This condition must be enforced through mandatory monitoring of waterways.

4.5 BORE WORK CONDITIONS

20. Any ***bore work*** undertaken in association with the ***mining activity*** must be:

(a) conducted by a ***licensed driller***;

(b) undertaken in accordance with the mandatory requirements set out in the most recently published edition of the document entitled 'Minimum construction requirements for water bores in Australia' published by the National Uniform Licensing Committee;

(c) be undertaken within two years of the initial licence grant date.

21. Prior to the commencement of ***bore work***, the ***mining operator*** must submit to the department written notification of the following:

(a) the expected start date; and

(b) the name of the ***licensed driller***.

22. The ***mining operator*** must be able to demonstrate that each bore drilled or constructed under this licence is sited as follows:

(a) at least 100m from the closest point of effluent discharge;

(b) at least 30m from a chlorinated aerated wastewater treatment system surface effluent irrigation area;

(c) at least 50m from an unchlorinated aerated wastewater treatment system surface effluent irrigation area;

(d) at least 70m from a neighbouring production bore;

(e) at least 100m from a water bore for the purpose of ***public water supply***, or a greater distance if specified by the Power and Water Corporation.

23. The ***mining operator*** must ensure the ***licensed driller*** undertaking the ***bore work*** completes the work by installing a self-draining concrete block around the bore, centred on the surface casing or surface collar within 28 days of completing the bore (i.e. when the casing is installed, production casing is sealed, airlifting has been undertaken (if required) and capping installed), unless a self-draining concrete block is already installed. In this regard:

(a) the block must have an area of at least $1m^2$;

(b) the block must extend at least 75mm above and 25mm below the surface of the ground;

(c) the top of the surface casing or collar must be above the top of the concrete block; and

(d) the distance between the top of the production casing and the top of the concrete block must be at least 300mm. However, this distance may be less than 300mm if necessary for the installation of the relevant pump, if at all times the production casing is sealed to prevent water and contaminants entering the bore.

24. The ***mining operator*** must ensure that each bore completed with a self-draining concrete block is clearly and permanently labelled with the registration number by the ***licensed driller*** undertaking the ***bore work***. The label must:

(a) display the registered bore number; and

(b) be fixed to either the production casing or the self-draining concrete block.

25. The ***licensed driller*** undertaking the ***bore work*** must send to the department a 'Statement of Bore' in the approved form no later than 28 days after completing the work.

26. As soon as practicable and no later than 24 hours after a failure to comply with any of the bore work conditions (i.e. conditions 20 to 26), the ***mining operator*** must send written notification to the department detailing the contravention.

The CLC submits that:

a. In section 4.5 (25) the NTG should require the operator to submit a cement bond log that shows that quality of the cement placed across the aquifer. This must be a requirement for all aquifers intersected, not just in the instance that more than one is intersected.
b. Operators must measure and report on the conditions (geological, vegetation, etc.) of a site prior to any disturbance occurring in order to ensure that a baseline condition is established and the quality of rehabilitation can be evaluated. This should be verified by an independent third party.
c. TOs must be involved in the process of evaluating rehabilitation. This is particularly important on Aboriginal freehold land.

4.6 Rehabilitation conditions

27. The ***mining activity*** must ensure drill pads and access tracks constructed through cut and fill methods are rehabilitated such that pre-disturbance topography (landform slope) is reinstated.

28. As soon as reasonably practicable, the ***mining activity*** must restore drill holes by sealing and filling in a manner that:

(a) prevents vertical migration of water within the drill hole, surface subsidence and surface water infiltration; and

(b) restores ***controlling geological conditions*** that existed before the drill hole was drilled.

29. The ***mining activity*** must include each of the following:

(a) commencement of rehabilitation of any area disturbed by a ***mining activity*** as soon as reasonably practicable;

(b) progressive rehabilitation if practicable;

(c) commencement of rehabilitation no later than 12 months following completion of the ***mining activity*** on the area disturbed; and

(d) maintaining the area disturbed to achieve a safe, stable, non-polluting state during any period of inactivity (including ***care and maintenance***) before rehabilitation is complete.

30. All areas disturbed by any ***mining activity*** must be stable and rehabilitated to a landform similar to that of pre-disturbance conditions, and where that is not practicable each of the following must be achieved:

(a) the land is safe for humans and fauna;

(b) the land is stable, without erosion gullies and supports appropriate vegetation;

(c) there is no ongoing contamination to waters;

(d) the maintenance requirements for the land are no greater than for the land before it was disturbed (i.e. it is self-sustaining);

(e) surface drainage patterns are consistent with the regional drainage function;

(f) final rehabilitated landscapes are comparable to appropriate reference vegetation communities and consistent with the post-mining environment; and

(g) no infrastructure (including roads and tracks) from mining activities is to be left on a mining site.

31. Rehabilitation works must be completed to the satisfaction of the Minister, despite the expiry,

surrender or cancellation of the ***mineral interest***.

The CLC submits that:

a. Operators must measure and report on the conditions (geological, vegetation, etc.) of a site prior to any disturbance occurring in order to ensure that a baseline condition is established and the quality of rehabilitation can be evaluated. This should be verified by an independent third party.
b. Operators should be required to provide a formal submission within 90 days that demonstrate that pre-disturbance conditions have been met or exceeded, unless it is established that pre-disturbance conditions are not desirable.
c. TOs must be involved in the process of evaluating rehabilitation. This is particularly important on Aboriginal freehold land.
d. The NTG should consider reducing the timing to commence rehab after completion of the mining activity, from 12 months (s.29 (c)). Land requiring rehabilitation is susceptible to wind and water erosion, weed infestation and soil loss; effects at odds with the standard conditions.
e. The NTG must provide clear parameters around the meaning of intent (s. 29(c)). Failure to do so creates a substantial risk of land being left disturbed for long periods of time, possibly at the detriment of the TOs. There must also be clear penalties for failing to demonstrate either the intent to explore or plans to rehabilitate the subject land.
f. The NTG should take into consideration the ways that TOs and nearby communities use land disturbed by mining activity. The operator must be required to ensure that the land can be used for cultural purposes in a safe way.
g. The NTG needs to provide a clear plan for monitoring and compliance beyond self-reporting.

4.7 Reporting conditions

32. The ***mining operator*** must keep ***records*** to demonstrate the risk criteria and licence conditions have been met; and such records must be kept:

(a) in Australia;

(b) for 5 years following the ***mining activity*** having been completed; and

(c) in a manner that enables provision on request within 10 business days.

33. The ***mining operator*** must submit written notification to the department within the timeframe indicated in the following events:

(a) within 30 business days of the ***project*** entering into a period of ***care and maintenance***;

(b) within 10 business days of the ***mining operator*** entering into administration or liquidation;

(c) 60 business days prior to the mineral titles subject to the environmental (mining) licence expiring or being surrendered.

34. Within 30 business days of completing mining activities (including any land clearing and access track installation), the ***mining operator*** must submit to the department:

(a) a completed ***disturbance report***;

(b) a completed ***exploration disturbance tracking spreadsheet***;

(c) the related spatial data, which at a minimum must include: the location, extent and status (proposed/completed) of drill holes, drill pads, sumps, access tracks, and all other

disturbance/infrastructure relating to the mining activity.

35. The ***mining operator*** may submit a ***forward program of works*** to the department for approval.

36. The program must be:

(a) submitted at least 30 business days prior to the proposed commencement of works;

(b) submitted with a revised security calculation;

(c) submitted with a rehabilitation report, if relevant;

(d) within the existing ***approved activity extent***;

(e) submitted with the related spatial data, which at a minimum must include: the location, extent and status (proposed/ completed) of drill holes, drill pads, sumps, access tracks, and all other disturbance/infrastructure relating to the mining activity.

37. The ***mining operator*** must not undertake any activities under a ***forward program of works*** unless the program has been approved by the department.

38. Within 12 months each year from the anniversary of the licence grant date, the ***mining operator*** must submit the following to the department:

(a) a completed ***exploration compliance report*** for the preceding 12 month period, demonstrating compliance with risk criteria and conditions;

(b) the updated ***exploration disturbance tracking spreadsheet***;

(c) the updated spatial data, which at a minimum must include: the location, extent and status (proposed/completed/ rehabilitated) of drill holes, drill pads, sumps, access tracks, all other disturbance/infrastructure relating to the mining activity, sensitive features identified for exclusion and their associated buffers.

The CLC submits that:

a. In the interests of transparency, all reporting should be made publicly available. This would improve public accountability and remove challenges in relation to retrieval of the record by the regulator, Land Councils, members of the public, and other stakeholders.
b. It is unclear whether the 'mining activity being completed' means the cessation of all mining activity on that title, or under that specific licence. The NTG should clearly define this
c. A five year period may not be long enough in instances where the land is, or becomes, heavily contaminated.
d. That all reporting from operators to the NTG should be provided to the TOs through the Land Councils.
e. As noted throughout this document, compliance with the conditions of the licence cannot rely on self-reporting. There needs to be resources for independent on-ground compliance.
f. Reporting on exploration compliance should be standardised to ensure that they are comprehensive (i.e. they include all relevant information) and they are comparable across organisations and over time.
g. The NTG include additional data requirements within section 4.7 (36) (e). The current minimum data requirements make monitoring and compliance, against natural surface and pre-disturbance surface impossible. Minimum data should include specific mention to collection of height data, minimum number of height data points, and pre-activity photographs.

h. With the inclusion of a definition for natural surface of the land, details are required on how this is to be established, specifically, this would require spatial data (x, z and z values) and photographs.

4.8 SECURITY AND LEVY CONDITIONS

39. The ***mining operator*** must provide to the Minister a mining security in the amounts or values and at the times required by the Minister by written notice to the ***mining operator***.

40. The ***mining operator*** must pay the mining levy payable under the *Legacy Mines Remediation Act 2023*.

41. The environmental mining licence does not take effect until:

(a) the mining security has been paid in accordance with condition 39; and

(b) a notice of authority to commence has been issued under the *Mineral Titles Act 2010*.

42. If a ***forward program of works*** is approved under condition 37 or an amendment is made to the licence under section 124ZS of the EP Act to permit a change to the mining activity and as a result an additional mining security is payable, the amendment does not take effect until:

(a) the additional mining security has been paid in relation to that change to the mining activity; and

(b) any required notice of authority to continue the mining activity is issued under the *Mineral Titles Act 2010*.

Annexure 1 - Central Land Council and Northern Land Council Joint Submission on the draft risk criteria and standard conditions – Environmental (Mining) License – exploration and extractive operations – 17 July 2024

CENTRAL LAND COUNCIL

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NORTHERN LAND COUNCIL
Our Land, Our Sea, Our Life

Northern Land Council
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Environment Policy – Mining Reforms

CLC Ref: D24-36014
NLC Ref: MNT2024/0006

Department of Environment, Parks and Water Security
GPO Box 3675
Darwin, NT 0801
Environment.policy@nt.gov.au

17 July 2024

SUBJECT: Central Land Council and Northern Land Council comment on Draft Risk Criteria and Standard Conditions – Environmental (Mining) Licence

To whom it may concern,

The Central Land Council (**CLC**) and the Northern Land Council (**NLC**) (the **Land Councils**) are pleased to provide feedback on draft risk criteria and standard conditions for exploration and extractives. When fully developed, this new framework has the potential to simplify environmental approvals. However, simplification must not come at the expense of the rights and interests of Aboriginal Territorians and their traditional lands. Failure to protect the environment through this framework bears a significant cultural and spiritual risk to Aboriginal Territorians.

The Land Councils expressed concerns, in our submission of 10 in October 2023, that the new framework does not provide for the adequate involvement of Aboriginal Territorians and does not substantially improve regulation and environmental protection[1]. In this submission we provide feedback on the draft risk criteria and conditions proposed by the Northern Territory Government (**NTG**). The submission is attached as Annexure 1.

This submission is structured in three parts. **Part I** outlines general comment about the proposed reforms. Specifically we comment on consultation with traditional owners and Aboriginal communities, the importance of clear definitions, details about risk assessment methods, and resourcing monitoring and compliance. **Part II** provides feedback on the draft standard conditions. **Part III** provides specific feedback about the draft risk criteria.

In our previous submission we invited the NTG to collaborate with the Land Councils to ensure this legislation has broad support and is thoroughly understood prior to its implementation. We reiterate this invitation through this submission.

SHAUN O'CONNOR
MANAGER, MINERALS & ENERGY
CENTRAL LAND COUNCIL

ADAM THOMPSON
BRANCH MANAGER – RESOURCES & ENERGY BRANCH
NORTHERN LAND COUNCIL

[1] CLC and NLC Joint submission on the Environment Protection Legislation Amendment (Mining) Bill 2023 and Legacy Mines Remediation Bill 2023 - 10 October 2023.

I. General comment

The Land Councils made a joint submission on the Environment Protection Legislation Amendment (Mining) Bill 2023 (**EP Bill)** on 10 October 2023. In that submission the Land Councils highlighted a number of concerns in relation to the EP Bill[6], namely:

- the inadequate involvement of Aboriginal Territorians;
- the missed opportunity to introduce comprehensive reforms in relation to sacred site protections, improved public reporting, greater transparency and consultation on applications for mining licenses, best practice progressive rehabilitation and chain of responsibility reforms; and
- concerns the reforms will not substantially improve regulation and environmental protection, particularly if DEPWS is inadequately funded to undertake compliance and enforcement actions.

In this further submission, the Land Councils would like to bring attention to the following issues:

- **The risk criteria must acknowledge Aboriginal Territorians' significant cultural and spiritual connection to country.**

The proposed risk criteria do not acknowledge the interests of Aboriginal Territorians as the traditional custodians of land historically and as recognised in Common Law, and provided for in legislation. The NTG cannot issue environmental (mining) licences without consideration for the cultural significance of an area. When assessing the risks of a proposal, the NTG must consult with the Traditional Owners (**TOs**) through the Land Councils to understand whether disturbance to that area has the potential to cause cultural or spiritual harm. The TOs must have the right to object to the issue of a standard environmental licence on the basis of a strong cultural connection to that land.

- **TOs[7] should be given the opportunity to comment on standard environmental licenses.**

Any standard environmental licences issued over Aboriginal Freehold Land or Native Title Land must be approved by the TOs through the Land Councils. This means ensuring appropriate statutory timeframes for consultation with TOs.

- **The NTG has not provided enough detail on the risk assessment process.**

The Land Councils seek more detail about the underlying risk management framework, and resultant risk assessment process. The NTG needs to provide further detail about what information operators must provide to demonstrate that they qualify for a standard licence. We would seek confirmation whether the NTG, or an independent third party, will verify evidence provided by operators.

- **Clear definitions are needed to avoid leaving decisions to the discretion of operators**.

Whilst the Land Councils can appreciate the flexibility afforded by a less prescriptive, outcomes-based approach, we are concerned that the current conditions lack sufficient detail to ensure strong environmental protections. Throughout this submission we highlight terms that require clear

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[6] CLC and NLC Joint submission on the Environment Protection Legislation Amendment (Mining) Bill 2023 and Legacy Mines Remediation Bill 2023 - 10 October 2023, sections 3.1 - 3.4, 3.7, 3.8, 3.13 - 3.15.
[7] The use of the term 'Traditional Owners' is used to include all types of Aboriginal land owners including traditional Aboriginal owners as defined in the Land Rights Act and native title holders as defined in the *Native Title Act 1993* (Cth).

definitions rooted in legislation. This includes terms like ‘material environmental impact’, ‘minimise the extent of vegetation clearing’, ‘keeping surface disturbance as low as practicable’, or ‘material impact on a nearby community’.

- **There provisions for mining operator self-assessment must be minimised.**

The Land Councils have serious concerns regarding provisions for mining operator self-assessment, which are not ameliorated through our understanding of NTG’s monitoring or compliance measures, or adequacy of resources available to regulators to enact. It is the view of Land Councils that self-assessment is not effective.

- **There must be sufficient resources for monitoring and compliance**.

The NTG, the Land Councils, or both, must be adequately resourced to conduct both desktop and on country monitoring and compliance. On Aboriginal land this process needs to include the TOs.

II. Specific feedback – Standard conditions

A. Draft standard conditions for exploration mining activities

General conditions
1. The mining operator must not undertake any mining activity inconsistent with the risk criteria.
The Land Councils support this principle. However we are concerned with its practical implementation. Specifically: a. The NTG must ensure that there is sufficient regulation and oversight of the industry to ensure compliance. The NTG must not rely on self-reporting from operators. Either the NTG or the Land Councils must be adequately resourced and skilled to be able to monitor compliance. The capacity of monitoring and compliance institutions must reflect the growth of the number of operators in the NT and the scale of exploration and mining being undertaken. b. The definitions of 'good practice' or 'best practice' must make specific reference in relation to best practice in engaging with Aboriginal people. c. The risk criteria must be regularly updated to reflect current best practice. d. The risk criteria must be clearly defined, comprehensive, and accessible. This includes linking the risk criteria to relevant legislation (for instance, for definitions). This will help reduce the risk of non-compliance. e. The Land Councils are concerned that there is no indication as to **how** risk will be assessed. The NTG must provide this detail and make provisions for public consultation on the method of risk assessment. f. There must be clear pathways for members of the public, particularly Aboriginal Territorians, to report on non-compliance. For specific feedback on the draft risk criteria, please refer to Part III of this submission.
2. The mining operator must carry out all mining activity in accordance with good industry practice.
The Land Councils submits that: a. The NTG must be more specific in reference to 'good industry practice'. This language is too vague. This standard could also be more rigorous, instead aiming for 'best' practice rather than 'good' practice. It should specify which best practice guidelines should be followed, with the caveat that practices change to reflect any updates to guidance. b. This should be regularly reviewed and updated to reflect advancements in the industry. c. The NTG should specify that this includes following industry best practice in regards to the rights and interests of Aboriginal people. It is recommended that the NTG refer mining operators to The Australian Business Guide to Implementing the UN Declaration on the Rights of Indigenous Peoples[8].
3. The mining activity undertaken by the mining operator on the mineral title must not result in the **(a) substantial disturbance of more than 10 hectares, excluding access tracks used for the mining activity, at any one time; or** **(b) excavation (excluding drilling) of more than 400 m3 of material at any one time.**

[8] https://unglobalcompact.org.au/wp-content/uploads/2020/11/Australian-Business-Guide-to-Implementing-the-UN-Declaration-on-the-Rights-of-Indigenous-People_FINAL.pdf

The Land Councils seek further clarification on the following:

a. How did the NTG arrive at the values provided in this criterion?
b. How is the NTG defining the clause 'at any one time'?
c. Once the threshold is reached, will the operator either be required to demonstrate full rehabilitation of historical disturbance, or apply for a higher tier of environmental licence?

In addition, the Land Councils submit that:

d. Access tracks and drilling must be included in the calculation of the footprint of disturbance.
e. In practice, construction of access tracks for exploration activities can involve large areas of vegetation clearing and exclusion of these areas form assessment creates a false footprint from the impact actually caused by the mining activity. Native vegetation clearing at a large scale clearly poses a risk of degradation and damage to land, indigenous flora and fauna, and cultural value.
f. The NTG should specifically consider impacts that land disturbance associated with exploration activity, notably access tracks, has on the proliferation of buffel grass, which has now been declared a weed in the Northern Territory. Land disturbance, including clearing of access tracks, should be minimised, as outlined in the NTG's *Buffel Grass Management Strategy: Central Australia 2024-2030*[9].
g. The NTG should specifically consider the potential that land disturbance associated with remote exploration activity has on the spread and proliferation of buffel grass. Operators must be required to undertake the reasonable management actions outlined in the NTG's *Buffel Grass Management Strategy: Central Australia 2024-2030*[10].
h. The NTG, the Land Councils, or both, must be adequately resourced to conduct on country monitoring and compliance. On Aboriginal land this process needs to include the TOs.
i. Likewise, the impact of drilling activities upon the environment may be substantial, especially as drilling activities often involve drilling through ground water aquifer systems.
j. If the amount of disturbance is not relative to the size of the project area, the significance of the disturbance caused will be proportionally much higher on smaller blocks. The disturbance will be much denser on a smaller project than a larger one. The NTG could reconsider making the disturbance permitted proportionate to the size of the subject area.

4. The mining operator must not undertake mining activity which causes, or would likely cause, material environmental harm:

(a) in circumstances where the mining activity is undertaken on a brownfield mine site or a legacy mine site;
(b) as a result of uranium or naturally occurring radioactive materials; or
(c) as a result of blasting.

In relation to this point, the Land Councils submit that:

a. Ambiguity exists with interpretation of this condition, such that, the condition effectively suggests that none of the activities are permitted under a standard licence. If so, it is suggested the wording be simplified to reflect this.
b. The NTG should consider reviewing its 'one size fits all' approach one size fits all approach is entirely inappropriate because it fails to account for the specific environmental and cultural conditions of each specific site. It should not be left to the operators to self-assess whether their activity creates material environmental harm.

[9] Buffel Grass Management Strategy: Central Australia 2024-2030.
[10] Buffel Grass Management Strategy: Central Australia 2024-2030, Table 2, p.10.

5. The mining operator must not undertake a mining activity in:

(a) the Alligator Rivers Region as defined in section 3(1) of the *Environment Protection (Alligator Rivers Region) Act 1978* (Cth);

(b) an area of land declared to be a park or reserve under either section 9(4), section 12 or section 24 of the *Territory Parks and Wildlife Conservation Act 1976*;

(c) an area of land managed under either section 73 or section 74 of the *Territory Parks and Wildlife Conservation Act 1976*; or

(d) land held by the Conservation Land Corporation.

The Land Councils submit that:

a. The NTG, in partnership with the Land Councils, must clearly communicate the areas that are off limits to exploration and mining. As highlighted above there must also be resources for monitoring and compliance.
b. This list should be expanded to include reserve blocks and proposed reserve blocks, as well as relevant buffer zones.

6. Any excavations (excluding drilling) as part of a mining activity by the mining operator must not be more than 2m in depth from the natural surface of the land.

The Land Councils submit that:

a. The NTG must provide a clear definition of the 'natural surface' of the land. This should be linked to specific definitions provided in legislation. The NTG should consider providing a process that operators must follow to identify the pre-excavation elevation. This should include a requirement that the operator submit photographic evidence of the excavation area before and after that illustrates clearly the removal of earth is equal to or less than two meters.
b. Even at this level, there may be difficulties in restoring streams and natural drainage channels. This may, for instance, limit the choice of Aboriginal landowners for preferred post-closure landforms and vegetation. The NTG should consider limiting excavation activity to higher tiers of environmental licences to ensure that Aboriginal landowners have the opportunity to be consulted prior to disturbance.
c. As per our comments in point A.3, the NTG must provide more clarity around the decision to exclude drilling from these impact assessments.

7. The mining operator must not undertake any mining activity which causes, or would likely cause, a material impact on a nearby community.

The Land Councils submit that:

b. As raised in A.6, the NTG must provide a clear definition of 'material impact'. This includes defining the scope of 'impact', for instance whether it includes cultural practices, livelihoods, build environment, etc. The regulation must also have a clear definition of 'nearby', including establishing a mandatory buffer zone around communities. A definition of community should be stipulated that includes community living areas and outstations/homelands. These should be linked to specific definitions provided in legislation where relevant.
c. The NTG must set out a clear plan for monitoring and compliance. There must be a mechanism for communities, particularly Aboriginal communities, to be able to raise concerns.
d. In light of the recent declaration of buffel grass as a weed, the NTG must ensure that the impact of the unintentional spread of buffel seeds is considered, noting its impact on environment and culture.

Flora and Fauna

8. The mining operator must not undertake any mining activity within a site of conservation significance which has, or would likely have, a material impact on the ecological values identified as the basis for that site of conservation significance.

The Land Councils submit that:

a. Under this condition the regulator will need to assess on a case-by-case basis whether exploration activity affects the ecological values specific to that site. It is our view that no exploration activity should be permitted on sites of conservation significance under a standard licence.
b. There must be rules requiring the immediate cessation of mining activity in the event of a discovery of sites of ecological or heritage significance.

9. The mining operator must not undertake any mining activity inside a 250m buffer from the outer edge of:

(a) rainforest;
(b) vine thicket;
(c) dense or close forest;
(d) riparian vegetation;
(e) mangroves;
(f) monsoon vine forest; or
(g) sandsheet heath.

The Land Councils submit that:

a. The NTG should reconsider the suitability of a 'one size fits all' approach, rather, consider 250m as a floor, with a larger offset if the environmental assessment finds that a further distance is necessary to protect (a) through to (g).
b. The NTG should consider the interplay between the draft standard conditions and draft risk criteria, to ensure effective delivery of the intent. For example, the interaction between draft risk criteria number 2, "The mining activity does not cause a material change to the bed, banks, course or flow of a waterway", and the above, does not manage the risk associated with the development of gully erosion. Specifically, the 250m buffer from riparian vegetation may not be effective without an assessment of the erosion potential. Without this assessment, a mining activity operating outside of a riparian zone has the potential to materially impact the riparian zone, as well as causing material change to beds and banks of a waterway.
c. Further, we seek clarification as to why wetlands are included in the equivalent clause for extractive minerals but not for exploration.

10. The mining operator is authorised to clear native vegetation provided that the mining operator must minimise the extent of any vegetation clearing (including native vegetation) and keep surface disturbance as low as reasonably practicable.

The Land Councils submit that:

a. This condition leaves too much discretion in the hands of operators. There must be clear guidance as to the meaning of 'reasonably practicable' and what it means to 'minimise' clearing. As flagged this should be linked to specific definitions provided in legislation.
b. The NTG must establish a process by which proposed clearing activity is properly documented and submitted for approval, with photos showing current vegetation and planned clearing.
c. The NTG needs to clarify how this will be regulated to mitigate the risk of non-compliance.
d. The Land Councils and TOs need to be consulted prior to any vegetation being cleared. This will prevent culturally or spiritually significant flora from being damaged.

11. The mining operator must not undertake mining activity which causes, or would likely cause, material environmental harm as a result of clearing trees with a diameter greater than 40cm at 1.2m high and containing hollows suitable for fauna habitat.

The Land Councils submit that:

a. No trees that have a diameter greater than 40cm at 1.2m high should be cleared, regardless of whether they contain suitable habitat for fauna. The NTG should provide further explanation as to how this threshold was decided.
b. The NTG should consider introducing a simple approvals process prior to any trees being destroyed. This ensures that the Land Councils and the NTG could evaluate the cultural and ecological value of trees prior to their destruction. Some trees are ecologically significant even at a smaller size than the threshold provided, such as the desert walnut (*Owenia reticulata*) and quandong (*Santalum acuminatum*). Large trees are often culturally significant to Aboriginal people and should not be destroyed without the consent of TOs.
c. Though the destruction of one singular small tree may not have a significant ecosystem impact, the cumulative impact of destroying multiple small trees in the same area should be considered. There needs to limits to the number of smaller trees that are destroyed within a project area.
d. The NTG needs a clear plan for monitoring and compliance of this condition.
e. We note that the equivalent condition for extractives also includes a condition that the operator must not undertake mining activity that causes damage to known caves. The Land Councils submit that this clause should be included in the conditions for exploration as well unless the NTG can explain otherwise. As per point B.10, the Land Councils submit that the word 'known' should be removed before caves as well.

Soils and Surface Water

12. Where soil disturbance occurs as a result of a mining activity, the mining operator must ensure that:
(a) topsoil quality is maintained for subsequent use in rehabilitation; and
(b) the soil profile and topography is reinstated to a state similar to the pre-disturbance state,

unless, in relation to an access track, the owner or occupier of the land consents in writing to the access track being left for the benefit of the owner or occupier of the land.

The Land Councils submit that:

a. The NTG must ensure that operators measure the baseline topsoil quality prior to disturbance in order to ensure it is reinstated to a similar state.
b. The NTG must define the parameters of what it means to be 'similar' to the pre-disturbance state.
c. The NTG must set out penalties for operators who fail to return the topsoil to the pre-disturbance state.
d. In addition, if a landowner requests that a track should be left on Aboriginal Land or on Native Title Land where an ILUA is in place between the operator and the Land Councils, the written consent for a track to be left must come from the Land Councils with the consent of the TOs.

13. The mining operator must ensure that the use, storage and disposal of:
(a) fuel;
(b) chemicals;
(c) drilling fluids;
(d) intercepted groundwater; and
(e) any drill cuttings or samples which may produce acid or metalliferous drainage,

will not result in any material environmental harm.

The Land Councils submit that:

a. The NTG needs to be more specific about what substances are included, particularly in relation to chemicals.

b. This list should be expanded to include contaminated groundwater used onsite.
c. All operators must be required to demonstrate their employees and contractors have had training in handling these materials. They must be required to develop a risk assessment and mitigation plan. They must also demonstrate that they have an approved procedure for responding to an emergency spill.

14. The mining operator must carry out mining activity in such a manner that prevents erosion of the mining site and prevents the sedimentation of any waterway.

The Land Councils submit that:

a. This condition must include any access tracks that are created within the mineral title area. It should also specify whether operators are liable for erosion or sedimentation as a result of their use of existing tracks within the tenement.
b. This condition must be linked to industry standards or guidelines illustrating best practice in relation to erosion and sedimentation.
c. Activity that has the potential to impact waterways should require consultation with communities through the Land Councils.
d. This condition must be enforced through mandatory monitoring of waterways.
e. The NTG should consider mandating the use of filter dams where the slope of the land presents a risk that site soil or other materials could be carried away by rainwater or onsite spills.

15. The mining operator must ensure any mining activity which causes interference with a waterway does not cause material environmental harm.

The Land Councils submit that:

a. The NTG should consider whether an additional application process should be introduced for works that interfere with a waterway. It is our view that it may not be appropriate to permit works that interfere with a waterway under a standard licence. The application process must also include sufficient time for consultation with TOs and affected Aboriginal communities, recognising the importance of water to culture and health.
b. This condition appears to contradict condition 9(d), which states that no activity can take place within 250m of any riparian vegetation.

16. The mining operator must not discharge any waste to water.

The Land Councils submit that:

a. The NTG must outline a clear plan for monitoring and compliance. This should include a publicly visible pathway for NT residents to be able to raise concerns about water contamination to the regulator.
b. This condition should reference the NT EPA process for administering waste discharge licences.

Groundwater

17. The mining operator must ensure that any exploration drill hole that intersects more than one aquifer is completed with casing of adequate strength and the casing cemented so that all aquifers are isolated to prevent the movement of any fluids behind the casing.

The Land Councils submit that:

a. The NTG needs to provide a clear plan for monitoring and compliance beyond self-reporting. This could include inspections by regulators and reference to relevant industry standards.

b. The NTG should require the operator to submit a cement bond log that shows that quality of the cement placed across the aquifer. This must be a requirement for all aquifers intersected, not just in the instance that more than one is intersected.

18. The mining operator must not undertake any mining activity inside a 500m buffer from the outer edge of any known:

(a) sinkholes; or

(b) springs.

The Land Councils submit that:

a. The inclusion of the word 'known' leaves room for operators to claim no knowledge of the location of sinkholes and springs.
b. NTG should include a requirement for mining operators to include a specific assessment, to be assessed by the regulator.
c. The NTG should include a requirement for operators to report the discovery of sinkholes or springs, including to the Land Councils.

Rehabilitation

19. The mining operator must:

(a) ensure drill pads and access tracks constructed through cut and fill methods are rehabilitated back to a state similar to the site's pre-disturbance slope, unless, in relation to an access track, the owner or occupier of the land consents in writing to the access track being left for the benefit of the owner or occupier of the land; and

(b) restore drill holes to controlling geological conditions that existed before the drill hole was drilled as soon as reasonably practicable.

The Land Councils submit that:

a. Operators must measure and report on the conditions (geological, vegetation, etc.) of a site prior to any disturbance occurring in order to ensure that a baseline condition is established and the quality of rehabilitation can be evaluated. This should be verified by an independent third party.
b. TOs must be involved in the process of evaluating rehabilitation. This is particularly important on Aboriginal freehold land.
c. It may not be appropriate to apply a blanket approach to rehabilitation conditions if the restoration process creates additional risks. For instance, if an operator disturbed ground vegetation to create level ground for a drill pad in soil types that are prone to erosion, re-establishing the initial slope profile may increase the risk of future erosion. On this basis it is our view that the NTG should establish a risk assessment framework for rehabilitation and consider focusing on remediation that strengthens or optimises the environmental conditions.
d. Rehabilitation of drill holes and associated infrastructure must be performed in line with international standards.
e. The NTG needs to provide a clear plan for monitoring and compliance beyond self-reporting.

Please refer to comments under point A.12 for feedback on consenting to leaving access tracks for use of landowners.

20. The mining operator must rehabilitate any area disturbed by a mining activity as soon as reasonably practicable, provided that:

(a) unless a mining operator intends to use the disturbed area for further mining activity, the mining operator must commence rehabilitation no later than 12 months following completion of the mining activity on the area disturbed; and

(b) if the miner intends to use the disturbed area for further mining activity, the mining operator must maintain the area disturbed in a manner to cause as little environmental impact as is reasonable in the circumstances and the mining operator must rehabilitate the area disturbed as soon as reasonably practicable once further mining activity by the mining operator on that disturbed area is completed.

The Land Councils submit that:

a. The regulation must consider the potential of cumulative impacts of land disturbance on exploration licences, due to ineffective or delayed rehabilitation.. The mineral title cannot expire prior to the rehabilitation being completed.
b. The NTG must provide clear parameters around the meaning of intent (20(a)). Failure to do so creates a substantial risk of land being left disturbed for long periods of time, possibly at the detriment of the TOs. There must also be clear penalties for failing to demonstrate either the intent to explore or plans to rehabilitate the subject land.
c. Similar to previous comments, the clause "as little environmental impact as reasonable in the circumstances" is too ambiguous. The NTG needs to define what is 'reasonable' and to identify which 'circumstances' this refers to. This should take into consideration the ways that TOs and nearby communities use that land. The operator must be required to ensure that the land can be used for cultural purposes in a safe way.
d. The NTG needs to provide a clear plan for monitoring and compliance beyond self-reporting.

21. The mining operator must ensure all disturbed areas from any mining activity are stable and rehabilitated to a landform similar to that of pre-disturbance conditions.

The Land Councils submit that:

a. As flagged in A.19, it may not always be feasible or desirable to return land to pre-disturbance conditions. Landowners must be involved in the rehabilitation planning and implementation so that their aspirations for post-mining land use can be reflected. TOs and nearby Aboriginal communities must be consulted through the Land Councils.
b. As identified in point A.19, operators must be required to measure and report on the baseline condition of the subject land to provide a reference point for assessment of rehabilitation.
c. Operators should be required to provide a formal submission within 90 days that demonstrate that pre-disturbance conditions have been met or exceeded, unless it is established that pre-disturbance conditions are not desirable.
d. The NTG needs to provide a clear plan for monitoring and compliance beyond self-reporting.
e. The Land Councils seek further clarification as to why additional specific conditions have been included for extraction but not for exploration (see point B.22). Many of those additional clauses are relevant to exploration as well.

Records and Reporting

22. Within 12 months each year from the anniversary of the licence issue date the mining operator must submit a completed exploration compliance report for the preceding 12 month period.

The Land Councils submit that:

a. That all reporting from operators to the NTG should be provided to the TOs through the Land Councils.
b. As noted throughout this document, compliance with the conditions of the licence cannot rely on self-reporting. There needs to be resources for independent on-ground compliance.
c. Reporting on exploration compliance should be standardised to ensure that they are comprehensive (i.e. they include all relevant information) and they are comparable across organisations and over time.

23. Within 30 days of completing drilling activities or any other land clearing (other than access tracks) the mining operator must submit completed disturbance report.
The Land Councils submit that: a. As per point A.3, the Land Councils object to the exclusion of access tracks from reporting about ground disturbance as this often constitutes the majority of the disturbance. In addition it represents a major risks in terms of erosion and introduction of weeds. As such, operators should be required to report on access tracks in these disturbance reports. b. As per point A.22, reporting should be standardised to ensure comprehensiveness and comparability. c. As per point A.22, all reports should be provided to TOs through the Land Councils.
24. The mining operator must keep records to demonstrate the risk criteria and licence conditions have been met and such records must be kept: **(a) in Australia;** **(b) for 5 years following the cessation of the mining activity; and** **(c) in a manner that makes retrieval of the record reasonably practicable.**
The Land Councils submit that: a. It is unclear whether the 'cessation of the mining activity' means the cessation of all mining activity on that title, or under that specific licence. The NTG should clearly define this. b. In the interests of transparency, all reporting should be made publicly available. This would improve public accountability and remove challenges in relation to retrieval of the record by the regulator, land councils, members of the public, and other stakeholders. c. A five year period may not be long enough in instances where the land is, or becomes, heavily contaminated.

B. <u>Draft standard conditions for extractive operations</u>

General conditions
1. The mining operator must not undertake any mining activity inconsistent with the risk criteria.
Refer to point A.1. The Land Councils submit that: a. There needs to be sufficient resources for monitoring and compliance. b. The risk criteria need to be updated to reflect best practice. c. More clarity is needed about how risk is assessed.
2. The mining operator must carry out all mining activity in accordance with good industry practice.
Refer to point A.2. The Land Councils submit that: a. Good practice must be clearly defined and regularly updated. b. The rights and interests of Aboriginal people must be specifically referenced.

3. The mining activity undertaken by the mining operator on the mineral title does not cause:

(a) substantial disturbance of more than 10 hectares, excluding access tracks used for the mining activity, at any one time; or

(b) the extraction of more than 10,000 tonnes per annum;

(c) excavations (excluding drilling) not more than:

(i) 2m in depth from the natural surface of the land if the mineral title is an extractive mineral permit; or

(ii) 10m in depth from

Refer to point A.3 and A.6.

The Land Councils submit that:

a. Access tracks should be included in the total area of disturbance, or subject to additional separate limitations. (A.3)
b. The NTG needs to issue guidance about measurement of the 'natural surface' (A.6).

4. The mining operator must not undertake mining activity which causes, or would likely cause, material environmental harm as a result of:

(a) 24 hour mining operations;

(b) the mining activity being undertaken on a brownfield mine site or a legacy mine site;

(c) uranium or naturally occurring radioactive materials;

(d) wet processing;

(e) dredging;

(f) stockpiling, storing or processing material in conjunction with another mineral title; or

(g) sand or gravel extraction from a waterway that causes material change or disturbance to the shape, bed, banks and/or flow of a waterway resulting in material impacts on the environment.

Refer to A.4.

The Land Councils submit that:

a. Material environmental harm needs to be defined, and significant environmental harm should be added. The regulator must consider the cumulative impact as well (A.4)
b. This list should be expanded to include the creation of tracks and the extraction of water.

5. The mining operator must not undertake a mining activity in:

(a) the Alligator Rivers Region as defined in section 3(1) of the *Environment Protection (Alligator Rivers Region) Act 1978* (Cth)

(b) an area of land declared to be a park or reserve under either section 9(4), section 12 or section 24 of the *Territory Parks and Wildlife Conservation Act 1976*;

(c) an area of land managed under either section 73 or section 74 of the *Territory Parks and Wildlife Conservation Act 1976*;

(d) land held by the Conservation Land Corporation; or

(e) the Howard Sand Plains site of conservation significance.

Refer to A.5.

The Land Councils submit that:

a. The NTG and Land Councils must clearly communicate areas that are off limits to extraction.
b. Resources are needed for monitoring and compliance.
c. In addition, the Land Councils seek clarification as to why the Howard Sand Plains site of conservation significance is specified but other sites are not.

6. The mining operator must not undertake any mining activity which causes, or would likely cause, a material impact on a nearby community.

Refer to A.7.
The Land Councils submit that:

a. Clear definitions of 'material impact', 'nearby' and 'community' must be provided.
b. There must be a mechanism for communities to make enquiries or lodge complaints about works near their communities.

Flora and Fauna

7. Subject to condition 5(e), the mining operator must not undertake any mining activity within a site of conservation significance which has, or would likely have, a material impact on the ecological values identified as the basis for that site of conservation significance.

Refer to A.8.
The Land Councils submit that:

a. No mining activity should be allowed on a site of conservation significance under a standard environmental licence. These areas should be subject to modified or tailored licences.

8. The mining operator must not undertake any mining activity inside a 250m buffer from the outer edge of:

(a) rainforest;
(b) vine thicket;
(c) dense or close forest;
(d) riparian vegetation;
(e) mangroves;
(f) monsoon vine forest;
(g) sandsheet heath; or
(h) wetland.

Refer to A.9.
The Land Councils submit that:

a. The NTG must provide guidance on measuring a 250m buffer from these areas.

9. The mining operator is authorised to clear native vegetation to undertake the mining activity provided that the mining operator must minimise the extent of any vegetation clearing (including native vegetation) and keep surface disturbance as low as reasonably practicable.

Refer to A.10.
The Land Councils submit that:

a. Clear definitions of 'minimising' clearing and 'as low as reasonably possible' must be provided.
b. TOs should be consulted prior to vegetation being cleared to prevent harm to culturally significant vegetation.

10. The mining operator must not undertake mining activity which causes, or would likely cause:

(a) material environmental harm as a result of clearing trees with a diameter greater than 40cm at 1.2m high and containing hollows suitable for fauna habitat; or
(b) damage to known caves.

Refer to A.11.
The Land Councils submit that:

a. No large trees should be destroyed under a standard environmental licence, regardless of whether they are habitat for fauna. Smaller trees should be considered too.

b. No trees should be destroyed without consultation with TOs.
c. Resources are needed for monitoring and compliance.

Specific to extraction, the Land Councils also submit that:

d. As with point A.18, inclusion of the word 'known' leaves room for companies to claim they had no knowledge of a cave even if they did damage it by accident. Whilst the NTG's draft provision would excuse the harm under law, it would not excuse the potential serious cultural and ecological harm caused.
e. NTG should include a requirement for mining operators to include a specific assessment, to be assessed by the regulator.

Soils and Surface Water

11. Where soil disturbance occurs as a result of a mining activity, the mining operator must ensure that:
(a) topsoil quality is maintained for subsequent use in rehabilitation; and
(b) the soil profile and topography is reinstated to a state similar to the pre-disturbance state,

unless, in relation to an access track, the owner or occupier of the land consents in writing to the access track being left for the benefit of the owner or occupier of the land.

Refer to A.12.
The Land Councils submit that:

a. Baseline soil quality and profile must be established prior to disturbance
b. 'Similar to pre-disturbance state' must be defined
c. Penalties should be published for failure to rehabilitate.
d. All requests for consent to leave tracks should go through the land councils, who will consult TOs.

12. The mining operator must ensure that the use, storage and disposal of:
(a) fuel;
(b) chemicals;
(c) drilling fluids;
(d) intercepted groundwater; and
(e) any drill cuttings or samples which may produce acid or metalliferous drainage,

will not result in any material environmental harm.

Refer to A.13.
The Land Councils submit that:

a. Operators must show that they have appropriate processes for safely handling these materials and that their staff are adequately trained.
b. Operators must show they have done a risk assessment and have an emergency response approach.
c. Material environmental harm must be defined.

13. The mining operator must carry out the mining activity in such a manner that prevents:
(a) a change to surface water quality having a detrimental effect on the environment as a result of contamination, sedimentation or inundation caused by the mining activities; or
(b) erosion of the mining site;
(c) the sedimentation of any waterway; and
(d) contamination of stormwater.

Refer to A.14
The Land Councils submit that:

a. The operators will need to establish a baseline condition of any waterways prior to disturbance.

b. The NTG needs to establish an appropriate timeframe throughout which the operator must continually monitor the condition of waterways.

14. For sand or gravel extraction from a waterway the mining operator must ensure:
(a) the shape of the waterway and the volume, speed or direction of flow in the waterway is not changed;
(b) the stability of the bed and banks of the waterway is not altered; and
(c) sensitive or significant vegetation is not cleared.

The Land Councils submit that:

a. This condition contradicts condition 8, which states that no extraction can take place within 250m of riparian vegetation. This suggests that little to no extraction from waterways would be able to take place under a standard environmental licence. In order to avoid confusion, no extraction from waterways should be permitted under a standard licence.
b. "Sensitive" or "significant" vegetation should be defined, to limit subjectivity and associated risks.

Further, the Land Councils seek clarification on the following:

c. Will operators be required to get a water licence under the Water Act as well as an environmental licence?
d. What baseline data will be used to gauge change in the shape, volume, speed or direction of flow?
e. How will change be assessed in arid areas where water may not flow for several years at a time?
f. What is the difference between 'altered' and 'changed' in this condition? The NTG must define these terms.

15. The mining operator must not carry out the mining activities which would either:
(a) disturb marine sediments; or
(b) cause acid and metalliferous drainage,

and would cause, or likely cause, material environmental harm.

The Land Councils submit that:

a. Material environmental harm must be defined clearly, and significant environmental harm should also be included.

16. The mining operator must not discharge any waste to water.

Refer to A.16.

The Land Councils submit that:

a. Resources must be dedicated to monitoring and compliance.
b. NT residents must be able to raise complaints to the regulator.

Groundwater

17. The mining operator must not undertake any mining activity inside a 500m buffer from the outer edge of any known:
(a) sinkholes; or
(b) springs.

Refer to A.18.

The Land Councils submit that:

a. The word known should be removed.

b. The NTG and land councils should work together to identify springs and sinkholes and make them known to operators.
c. The NTG should include a requirement for operators to report the discovery of sinkholes or springs, including to the Land Councils.

18. The mining operator must not undertake any mining activity:
(a) located in an area subject to 1:100 year flooding events; or
(b) below a level which is 2m above the highest seasonal groundwater table.

The Land Councils submit that:
a. There must be rigorous publicly available information as to which areas are subject to 1:100 year flooding events. This information must be assessed in light of the likely impacts of climate change in making these events more frequent and unpredictable.
b. The NTG must specify whether this includes the creation and use of access tracks.

19. The mining operator must not undertake any mining activity which would cause, or would likely cause, material adverse impacts to groundwater.

The Land Councils submit that:
a. The NTG must define material adverse impacts in relation to groundwater.
b. Operators must be required to establish baseline groundwater conditions prior to any disturbance and adhere to industry best practice in consistent monitoring of groundwater conditions.
c. The Land Councils must be involved in the process of establishing baseline conditions and any mechanisms to protect groundwater.

Air Quality

20. The mining operator must not:
(a) generate dust; or
(b) undertake blasting,

as part of the mining activity which would cause, or likely cause, material environmental harm or material adverse impact on public health.

The Land Councils submit that:
a. As per other feedback, the NTG needs to define 'material environmental harm' and 'material adverse impacts on public health'. The latter definition should include cultural and spiritual health.

Rehabilitation

21. The mining operator must rehabilitate any area disturbed by a mining activity as soon as reasonably practicable, provided that:
(a) unless a mining operator intends to use the disturbed area for further mining activity, the mining operator must commence rehabilitation no later than 12 months following completion of the mining activity on the area disturbed; and
(b) if the miner intends to use the disturbed area for further mining activity, the mining operator must maintain the area disturbed in a manner to cause as little environmental impact as is reasonable in the circumstances and the mining operator must rehabilitate the area disturbed as soon as reasonably practicable

Refer to A.20.
The Land Councils submit that:

a. The NTG needs to define 'genuine intent' and explain how it will be monitored.
b. The NTG needs to define 'as little environmental impact as reasonable in the circumstances.'
c. The NTG needs to define the consequences of failing to 'commence' rehabilitation after 12 months.

22. The mining operator must ensure all disturbed areas from any mining activity are stable and rehabilitated to a landform similar to that of pre-disturbance conditions, and:

(a) the land is safe for humans and fauna;
(b) the land is stable, without erosion gullies and supports appropriate vegetation;
(c) there is no ongoing contamination to waters;
(d) the maintenance requirements for the land are no greater than for the land before it was disturbed;
(e) surface drainage patterns are consistent with the regional drainage function;
(f) any permanent surface water features created by mining will not adversely affect the surrounding environment and will be consistent with the surrounding environment and post-mining land use;
(g) final rehabilitated landscapes are comparable to appropriate reference vegetation communities and consistent with the post-mining environment; and
(h) no infrastructure from mining activities is to be left on a mining site unless agreed by the Minister and the landowner.

Refer to A.21.
The Land Councils submit that:

a. TOs and affected communities should be involved in rehabilitation planning, through the land councils.
b. Operators must be required to take surveys prior to disturbance to create a baseline for evaluating rehabilitation.
c. The conditions for exploration should reflect the additional detail provided in these conditions for extractives, unless the NTG can explain why it has not.

Records and Reporting

23. Within 12 months each year from the anniversary of the licence issue date the mining operator must submit a completed extractive operation compliance report for the preceding 12 month period.

Refer to A.22.
The Land Councils submit that:

a. All reports should be provided to the TOs through the land councils.
b. Self-reporting of compliance needs to be validated through on-ground compliance by the NTG or another independent body.
c. Reporting must be standardised.

24. The mining operator must keep records to demonstrate the risk criteria and licence conditions have been met an such records must be kept:

(a) in Australia;
(b) for 5 years following the cessation of the mining activity; and
(c) in a manner that makes retrieval of the record reasonably practicable.

Refer to A.24.
The Land Councils submit that:

a. 'Cessation of mining activity' needs to be defined.
b. All reports should be made available to the public.

III. Specific feedback – Risk criteria

C. Draft risk criteria – exploration

1. The mining activity undertaken by the mining operator on the mineral title does not cause: **i. substantial disturbance of more than 10 hectares, excluding access tracks used for the mining activity, at any one time; or** **ii. the excavation (excluding drilling) of more than 400 m3 of material at any one time,** **and which has a significant impact on the environment.**
The draft risk criteria should consider comments made in A.3.
2. The mining activity does not cause a material change to the bed, banks, course or flow of a waterway.
The draft risk criteria should consider comments made in A.9, A.14, and A.15. The Land Councils submit that: a. The risk criteria needs to provide clear definitions, quantifiable and measurable aspects, to aid compliance and enforcement.
3. The mining activity will not be located in: **i. a Commonwealth reserve as defined in section 528 of the *Environment Protection and Biodiversity Conservation Act* (Cth);** **ii. an area on the Park under the *Nitmiluk (Katherine Gorge) National Park Act 1989* (NT);** **iii. a sanctuary or marine park as defined in section 3 of the *Coburg Peninsula Aboriginal Land, Sanctuary and Marine Park Act 1981* (NT); or** **iv. declared protected area under the *Environment Protection Act 2019* (NT) (EP Act).**
The draft risk criteria should consider comments in A.5.
4. The mining operator must not undertake any mining activity within a: **i. rainforest;** **ii. vine thicket;** **iii. dense or close forest;** **iv. riparian vegetation;** **v. mangroves;** **vi. monsoon vine forest; or** **vii. sandsheet heath,** **and which has a significant impact on the environment**
The draft risk criteria should consider comments in A.9. The Land Councils submit that: a. The risk criteria needs to provide clear definitions, quantifiable and measurable aspects, to aid compliance and enforcement.

D. Draft risk criteria – extraction

1. The mining activity undertaken by the mining operator on the mineral title does not cause: **i. substantial disturbance of more than 10 hectares, excluding access tracks used for**

the mining activity, at any one time; or

ii. the extraction of more than 10,000 tonnes per annum;

iii. excavations (excluding drilling) not more than:

A. 2m in depth from the natural surface of the land if the mineral title is an extractive mineral permit; or

B. 10m in depth from the natural surface of the land if the mineral title is an extractive mineral lease,

and which has a significant impact on the environment.

The draft risk criteria should consider comments in A.3, A.6 and B.4.

2. The mining activity does not cause a material change to the bed, banks, course or flow of a waterway so as to cause, or likely cause, a significant impact on the environment.

The draft risk criteria should consider comments in A.14, B.13, and B.14.

The Land Councils submit that:

a. The risk criteria needs to provide clear definitions, quantifiable and measurable aspects, to aid compliance and enforcement.

3. The mining activity will not be located in:

i. a Commonwealth reserve as defined in section 528 of the *Environment Protection and Biodiversity Conservation Act* (Cth);

ii. an area on the Park under the *Nitmiluk (Katherine Gorge) National Park Act 1989* (NT);

iii. a sanctuary or marine park as defined in section 3 of the *Coburg Peninsula Aboriginal Land, Sanctuary and Marine Park Act 1981* (NT); or

iv. declared protected area under the *Environment Protection Act 2019* (NT) (EP Act).

The draft risk criteria should consider comments in A.5 and B.5.

The mining operator must not undertake any mining activity within a:

i. rainforest;

ii. vine thicket;

iii. dense or close forest;

iv. riparian vegetation;

v. mangroves;

vi. monsoon vine forest;

vii. sandsheet heath; or

viii. wetland,

and which has a significant impact on the environment

The draft risk criteria should consider comments in A.9 and B.8.

The Land Councils submit that:

a. The risk criteria needs to provide clear definitions, quantifiable and measurable aspects, to aid compliance and enforcement.

Annexure 2 - Central Land Council and Northern Land Council Joint Submission on the Environment Protection Legislation Amendment (Mining) Bill 2023 and Legacy Mines Remediation Bill 2023 – 10 October 2023

CENTRAL LAND COUNCIL

and

NORTHERN LAND COUNCIL

Joint submission on the Environment Protection Legislation Amendment (Mining) Bill 2023 and Legacy Mines Remediation Bill 2023

10 October 2023

To: Environment Policy, Department of Environment, Parks, and Water Security and Legacy Mines Unit, Department of Industry, Tourism and Trade

By email: lmu.ditt@nt.gov.au; environment.policy@nt.gov.au

ACKNOWLEDGEMENT

The Central Land Council and Northern Land Council acknowledge the Territory's traditional owners, who were the first inhabitants in the Territory and remain the first and most important stewards of the Territory's resources.

Contents

1. EXECUTIVE SUMMARY

The Northern Land Council (**NLC**) and Central Land Council (**CLC**), together, the **Land Councils**, welcome the proposal to improve the regulatory framework dealing with environmental impacts of mining.

However, the draft Environmental Protection Legislation Amendment (Mining) Bill (**EP Bill**) and draft Legacy Mines Remediation Bill (**Legacy Mines Bill**), together the **draft bills**, are not sufficiently developed to be introduced. The proposed changes are extensive and passage of the bills in their current form is likely to introduce significant uncertainty for the industry, Traditional Owners[11] and other stakeholders.

The Northern Territory Government (**Territory Government**) must collaborate with the Land Councils to develop legislation that has broad support and is thoroughly understood prior to implementation. To this end, we submit that the draft bills must be deferred for at least three to six months.

Overall, the Land Councils consider that the draft bills:

1. do not provide for the adequate involvement of Aboriginal Territorians;

2. are a missed opportunity to introduce comprehensive reforms;

3. will not substantially improve regulation and environmental protection; and

4. will have an uncertain impact on legacy mines and mines approaching closure.

Our concerns specific to the EP Bill are:

1. Entry onto Aboriginal land pursuant to the EP Bill must comply with the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (**Land Rights Act**) and the *Aboriginal Land Act 1978* (NT) (**Aboriginal Land Act**).

2. Licence conditions should be amended on request, and in consultation with Traditional Owners.

3. Consultation timeframes should be appropriate for Traditional Owners.

4. Traditional Owners should have standing for merits review.

5. The EP Bill gives too much discretion to the Minister.

6. Standard conditions for an environment (mining) licence (**mining licence**) and risk criteria must be the subject of consultation *before* passing the EP Bill.

7. There must be greater transparency and consultation on applications for mining licences.

[11] The use of the term 'Traditional Owners' is used to include all types of Aboriginal land owners including traditional Aboriginal owners as defined in the Land Rights Act and native title holders as defined in the *Native Title Act 1993* (Cth).

8. More information should be required for applications for mineral titles and mining licences.

9. Additional reasons for the Minister to revoke mining licences should be included.

10. There should be stronger provisions for comprehensive and costed rehabilitation and closure plans.

11. Provisions around mining securities should be strengthened.

12. Provisions regarding mines in care and maintenance should be strengthened.

13. Public reporting requirements should be improved.

14. Enforcement and compliance measures need to be strengthened and funded accordingly.

15. Provisions regarding best practice progressive rehabilitation should be included.

16. Transitional arrangements are inadequate.

Our specific concerns in relation to the Legacy Mines Bill are:

1. Entry onto Aboriginal land pursuant to the Legacy Mines Bill must comply with the Land Rights Act and the Aboriginal Land Act.

2. The definition of ”legacy mines” is not sufficiently targeted.

3. Regulations for the Legacy Mines Bill must be made available for comment.

4. The Department of Environment, Parks and Water Security (**DEPWS**) should be responsible for environmental management and rehabilitation of legacy mines.

5. Remediation activities must be subject to statutory approvals.

6. The impact of the Legacy Mines Bill on specific sites is unclear.

We expand on these concerns below, and refer to recommendations made in the joint Land Councils' submission 'regulation of mining activities- environmental regulatory reform' dated 1 March 2021 (**2021 submission**).

2. BROAD CONCERNS WITH THE DRAFT BILLS

2.1 Inadequate involvement of Aboriginal Territorians.

If the draft bills are introduced in their current form, the Land Councils cannot support the new regulatory scheme. This is because the draft bills do not:

- refer to Traditional Owners or Aboriginal communities other than purporting to remove the need for compliance with the Land Rights Act and Aboriginal Land Act when accessing Aboriginal land which is likely to be ultra vires and requires further explanation.

- provide for meaningful involvement of Traditional Owners and Aboriginal communities.

Traditional Owners bear significant risk and share the Territory Government's concerns about adequate and safe rehabilitation. Their interests extend beyond those of the general public or pastoral landowners who do not have the same cultural ties nor responsibilities. Further, where a project is located on Aboriginal land or native title affected land, the post-mining land use is determined by or with the Traditional Owners.

In our submission, it follows that:

- Regulatory approvals for all stages of mining disturbance must involve Traditional Owners (as the Inquiry into the Destruction of the 46,000 year old caves at Juukan Gorge (Juukan Gorge Inquiry) made clear). This is not confined to requirements in relation to sacred sites but applies to all archaeological sites, and clearances and approvals, regardless of whether the project is on Aboriginal land or land subject to native title.

- Traditional Owners must be directly involved in mine closure planning from an early stage and rehabilitation after mine closure should be to the satisfaction of Traditional Owners.

- The draft bills must take into account to the proposed National Environmental Standard in First Nations Participation and Engagement.

The Land Councils are deeply dissatisfied by the failure of the draft bills to adequately address these concerns.

2.2 Missed opportunity to introduce comprehensive reforms

The draft bills fail to implement a number of critical reforms, including relating to:

1. protecting sacred sites and cultural heritage approvals;

2. residual risk payments;

3. chain of responsibility.

<u>Protection of sacred sites and cultural heritage approvals</u>

The draft bills do not propose any amendments to sacred sites or cultural heritage approval requirements, when these reforms are urgent and critical. The draft bills should include minimum requirements for protection, including:

- a cultural heritage (including sacred sites) survey as a condition of a grant of a mineral title prior to all ground disturbance. This should include a report from a suitably qualified cultural heritage specialist working directly with Traditional Owners. The recommendations from the report must inform a cultural heritage management agreement for the life of the project. It is standard practice in the resources sector across Australia for regulatory approvals to include a requirement for an on-site survey of cultural heritage.

- in CLC's region, a Sacred Site Clearance Certificate (**SSCC**) to be issued by CLC before any ground disturbing works

- in NLC's region:

    a. a sacred sites survey conducted either by NLC or Aboriginal Areas Protection Authority (**AAPA**); and

    b. an Authority Certificate issued by AAPA before any disturbance activities.

The CLC submits that:

- SSCCs provide the applicant with documentary evidence that the custodians and Traditional Owners of the subject land have been consulted and agree that the applicant's proposed works can go ahead without damage to sacred sites on the basis of the conditions in the SSCCs.

- SSCCs protect the applicants against prosecution for entering, damaging or interfering with sacred sites under the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT) and the Land Rights Act.

- The CLC's SSCC process was endorsed in the Mineral Council of Australia's submission to the Juukan Gorge Inquiry.[12]

The Land Councils further submit that:

- A search of AAPA's sites register is not an adequate process in relation to exploration as this is the stage at which otherwise undisturbed land is first disturbed. The Juukan Gorge Inquiry recommended that Traditional Owners must be central in decision making about sacred sites and cultural heritage.

- The *Heritage Act 2011* (NT) does not meet the proposed national cultural heritage reform standards post-Juukan Gorge Inquiry. Consequently, archaeological sites and objects in the NT are currently extremely vulnerable to mining and exploration projects.

[12] Minerals Council of Australia, submission to the Inquiry into the destruction of 46,000 year old caves at Juukan Gorge in the Pilbara region of Western Australia, p 9, sub 104.

Residual risk payments

The reforms do not propose any provisions regarding residual risk payments. In order to increase public confidence through transparency, the public must be able to access information regarding:

- the value of bonds;
- the methodology used to calculate liabilities;
- the requirements, risks and expectations the bond is underpinning; and
- the terms upon which the residual risk bonds can be called upon.

Further, Traditional Owners should have the ability to recommend release and revision of residual risk payments.

Chain of responsibility reforms

While chain of responsibility legislation has been introduced in relation to petroleum activities, there has been no equivalent legislation in relation to mining activities. Such reforms are equally critical in relation to mining activities, and the NLC refers to its submission of 5 August 2022 in relation to the draft Environment Protection Legislation Amendment (Chain of Responsibility) Bill 2022.

The Land Councils submit that equivalent chain of responsibility provisions should be included in these reforms.

2.3 The draft bills will not substantially improve regulation and environmental protection.

The draft bills are unlikely to improve the standard of regulation and environmental protection in the NT for the following reasons:

- A one-month public consultation period is insufficient given the complexity and volume of the draft bills.
- The draft bills lack critical information:
    a. calculation of security bonds and making sure that they cover the full costs of rehabilitation. This leaves the risk that Traditional Owners will inherit contaminated land or other legacy issues;
    b. standard conditions for a mining licence and the risk criteria;
    c. proposed regulations for the Legacy Mines Bill;
    d. detail on mine closure planning;
    e. conditions applying to mines in care and maintenance; and
    f. factors guiding the exercise of the broad Ministerial discretions contained in the draft bills.

- While there are broad similarities with the concept of standard conditions in the Queensland legislation, the draft bills do not appear to be informed by the experiences or practices of larger, proven regulatory jurisdictions.

- Key aspects provided for in the *Mining Management Act 2001* (NT) (**Mining Management Act**) have no suitable replacements, such as:

    a. the level of information required to be submitted in an application for an Authorisation under section 36(2); and

    b. the requirement that a mining management plan include a plan and costing of closure activities under section 40(2)(g).

- Several large and legacy mine sites may be caught by the Legacy Mines Bill and therefore be subject to less rigorous rehabilitation requirements.

2.4 The impact on legacy mines and mines approaching closure is unclear

The draft bills fail to provide a clear and structured framework for mandatory mine closure planning. This is a major omission, and is one of the key areas in which the Territory Government should be a regulatory leader. At present, the operators at major mines rely entirely on their internal corporate standards which follow a mandatory mine closure planning framework. This is unacceptable.

The Land Councils hold significant concerns regarding the impact of the draft bills on:

- the existing regulatory framework for legacy mine sites such as the former Rum Jungle uranium mine site near Batchelor (**Rum Jungle**) and the former Redbank Mine at Sandy Flat (**Redbank Mine**);

- mines with extremely complex long-term closure challenges such as the McArthur River Mine; and

- other mines approaching closure.

3. DRAFT EP BILL

3.1. Entry onto Aboriginal land must comply with the Land Rights Act and the Aboriginal Land Act.

The Land Councils consider that clause 124ZZZM(7) of the EP Bill, if legislated in its current form, is likely to be *ultra vires*. This is because:

- That provision proposes to allow a person to enter land or premises, despite the land being Aboriginal land, without complying with the Land Rights Act and the Aboriginal Land Act.[13] Those provisions are intended to apply to a holder of a conditional environmental approval under section 85 of the *Environment Protection Act 2019* (NT) (**EP Act**) or the holder of a conditional mining licence.[14]

[13] Clause 124ZZZM(7), EP Bill
[14] Clause 124ZZZL, EP Bill.

- Those environmental approvals or mining licences contain conditions that apply after an 'action' or 'mining activity' has been completed. The provisions cite examples such as rehabilitation, monitoring or reporting obligations, but are not exhaustive. That is, those conditions are not limited to these specifically identified activities. [15] The purported power to enter Aboriginal land, irrespective of compliance with the Land Rights Act or Aboriginal Land Act, is therefore broad in scope.

- Section 70(2A) of the Land Rights Act establishes defences to the offence of entering or remaining on Aboriginal land, including where that person enters or remains on land in performing functions or exercising powers under a law of the NT (such as the Aboriginal Land Act). However, that provision is subject to section 73(1)(b) of the Land Rights Act.

- Section 73(1)(b) of the Land Rights Act provides that the Territory Government may make laws regulating *entry* onto Aboriginal land, with the additional requirement in section 74(1) that such laws be capable of concurrent operation with the Land Rights Act. Section 73(1)(b) *does not* provide that the Territory Government may make laws allowing extensive access for mining related works and activities on Aboriginal land.

- An entry for that purpose and activity would detract from the rights conferred upon an Aboriginal Land Trust by the fee simple grant, and alter the scheme of the Land Rights Act for conferring rights on others to enter and use Aboriginal land (including in respect of mining).

In addition, the Land Councils are concerned that legislating clause 124ZZZM(7) in its current form will:

- allow for sacred site and cultural heritage protection approvals to be circumvented, particularly by third parties who are not bound by agreements with Traditional Owners, Land Councils and Aboriginal Land Trusts; and

- raise significant uncertainty regarding liability for any damage that may occur pursuant to these provisions.

It follows, in our submission, that:

- the Territory Government must comprehensively set out its view as to the interaction between clause 124ZZZM(7) and the Land Rights Act;

- the Land Councils be provided an opportunity to respond;

- clause 124ZZZM(7) of the EP Bill must be amended to ensure compliance with the Land Rights Act; and

[15] See section 85(2) of EP Act and clause 124ZA(2), EP Bill

- this should occur prior to Parliament's consideration of the EP Bill.

3.2. Licence conditions should be amended on request, and in consultation with Aboriginal Territorians.

Clauses 124ZQ(2) and (3) relate to the publishing of reasons for a decision to amend the conditions of a licence. The Land Councils consider that:

- the requirement to publish reasons is unduly narrow;
- the Minister should be able to amend the conditions of a licence upon consultation with an impacted local community (including an Aboriginal community) or Traditional Owners;
- the requirements in clauses 124ZQ(2) and (3) should apply to all amendments of conditions, regardless of the reason for which the amendment is required;
- the requirement should be one of consultation, rather than mere publishing of the proposed amendment.

3.3. Consultation timeframes should be appropriate for Traditional Owners.

Under the EP Bill, public comment periods must not be less than 30 business days after the date of the notice.[16]

As stated in our 2021 submission, this is an insufficient timeframe for consultation with Traditional Owners who normally live in remote locations. Arranging consultations is logistically time-consuming and resource intensive.

3.4. Traditional Owners should have standing for merits review.

The EP Bill does not afford sufficient standing to Traditional Owners to review decisions.

Under the EP Bill, an 'affected person' includes only a person directly affected by the decision or a person who has made a genuine and valid submission during the licensing process. The definition of 'genuine and valid submission' is limited (under proposed section 277(2A) of the Act). The EP Bill does not propose to make reasons underpinning decision-making available upon request.

The Land Councils submit that:

- the grounds for standing should expressly include Aboriginal Land Trusts, Prescribed Bodies Corporates and Traditional Owners;
- the Territory Government must confirm that Traditional Owners fall within the definition of 'directly affected'; and
- the EP Bill must be amended to make reasons available to Traditional Owners upon request.

[16] Clauses 233D(3) and 233G, EP Bill.

3.5. The EP Bill gives too much discretion to the Minister.

The EP Bill does not set out the basis for the Minister's decisions to:

- approve standard conditions for a mining licence[17];
- review the risk criteria and standard conditions for a mining activity at any time;[18] and
- amend the risk criteria and standard conditions on completion of a review.[19]

While standard conditions will be published, there is no requirement that proposed standard conditions be made available for public comment. Further, the EP Bill does not contain any minimum standard for the conditions of a mining licence. It only states that the following conditions *may* be included:

- conditions that are necessary to manage the environmental impacts associated with the mining activities[20];
- conditions that may authorise or regulate the environmental impacts of certain activities[21];
- conditions for a mining operator to provide reports to the Minister[22]; and
- conditions about care and maintenance[23].

The Land Councils submit that the EP Bill must be amended to:

- provide minimum standard conditions for a mining licence which must be subject to consultation (see paragraph 3.6); and
- remedy the lack of transparency regarding decision making.

3.6. Standard conditions for a mining licence and risk criteria must be the subject of consultation before passing the EP Bill.

The Land Councils have significant concerns that the detail of how the regulatory scheme is proposed to work has not been finalised or subject to consultation. We understand that:

- the standard conditions and risk criteria will be modelled on the Queensland framework for environmental conditioning, which includes eligibility criteria for projects; and
- the Territory Government intends to consult on the standard conditions and risk criteria after the draft bills have passed.

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[17] Clause 124T(1), EP Bill
[18] Clause 124U(1), EP Bill
[19] Clause 124V(1), EP Bill
[20] Clause 124W, EP Bill
[21] Clause 124X(1), EP Bill
[22] Clause 124Y(1), EP Bill
[23] Clause 124Z, EP Bill

In response, we consider that:

- If the NT context is to be modelled on the Queensland framework, then the Territory Government must develop a similarly comprehensive framework for the NT to complement any standard conditions developed. Queensland relies on the detailed requirements in the *Mineral Resources Act 1989* (Qld) (**QLD Mineral Resources Act**) to ensure there is an adequate understanding of the mining project itself. This informs regulation of the recovery of the resource in accordance with technical standards.

- Given the importance of the standard conditions and risk criteria, the Territory Government must consult on these matters *before* Parliament introduces the EP Bill.

- There is limited need for standard conditions to be developed because the N T is not inundated by multiple applications for mining interests. Most if not all applications and projects in the NT could be subject to tailored conditions. This would reflect the largely undeveloped nature of the industry.

- Any standard conditions adopted must be the floor, not the ceiling. This is especially important in a context where it is the current intention of the EP Bill is that the public is not consulted on mining licences with standard conditions which we disagree with (see paragraph 3.7 below).

- Investing in the development of standard conditions will not improve the standing of the NT but is likely to lead to a level of bureaucratic categorisation that is largely unnecessary.

3.7. There must be greater transparency and consultation on applications for mining licences.

The Land Councils submit that that the EP Bill must require all applications for mining licences to be advertised for public consultation. The EP Bill fails to remedy the present lack of transparency in the industry. This is because:

- Not *all* applications for mining licences are required to be advertised for public consultation.

- The EP Bill only requires the Minister to publish applications for modified condition and tailored condition mining licences [24] and invite persons to make written comments to the Minister on whether the licence should be granted or refused.[25]

- Further, this does not apply if:

    a. the application relates to a mining activity for which an environmental approval has been granted or is required,[26] and

[24] Clause 233S(1), EP Bill
[25] Clause 233T(2), EP Bill
[26] Clause 233S(2), EP Bill

b. the application is for a mining licence with standard conditions.

- The EP Bill currently requires that only holders of exploration licences that are undertaking exploration which will involve significant disturbance of a mining site should require a mining licence,[27] when it should require that all holders of exploration licences should obtain a mining licence. For example, an activity such as rock chipping may not constitute a significant disturbance to the physical environment (low ecological risk) but may constitute a significant disturbance to the socio-cultural and spiritual environment if the targeted outcrop is otherwise undisturbed and there has never been any survey or assessment of significance of any cultural heritage.

3.8. More information should be required for applications for mineral titles and mining licences.

The Land Councils are concerned that the EP Bill requires insufficient and inadequate information for a mining licence. The requirements for information for an Authorisation under the Mining Management Act are significantly more comprehensive.

With the proposed repeal of the Mining Management Act, the applicant will be required to provide less information than under the current regulatory framework. For example:

- Currently, the application for an Authorisation must be accompanied by a mining management plan[28] and the mining management plan must include the details set out in section 40(2) of the Mining Management Act.

- In contrast, when applying for a mineral title under the proposed regime, the applicant will only need to provide information about its 'technical work program'[29] and 'details of technical and financial resources'.[30]

- When applying for a standard condition mining licence, an applicant does not need to submit an assessment of the environmental risks and impacts associated with the mining activity.[31] The Minister will let the applicant know if there is any further information they need to assess the application.[32]

We do not support any reduction in the amount of information that must be submitted. The decision maker under the Mineral Titles Act is likely to be more open to challenge as there is little legislative guidance as to the basis on which decisions will be made.

If the reforms are to meet their stated objectives, the legislation must require that an applicant provide information as to:

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[27] Clause 124L(2), EP Bill
[28] Section 36(2), Mining Management Act
[29] See the fact sheet titled "*ME: Technical Work Programs for Mineral Lease Applications"*.
[30] See the Process Schematic (flowchart) – Apply for mineral title and licence process. See also Page 4 of the paper title "Regulation of Mining Activities Reform Summary", which reveals that there is no intention of increasing the information to be submitted as part of a technical work program.
[31] Clause 124ZC(3)(c), EP Bill.
[32] Clause 124ZC(f), EP Bill

- how the project has been designed and optimised for public benefit with reference to the specific commodity being mined (see, for example, section 317N of the QLD Mineral Resources Act); and

- details of its mine closure plans. This would be consistent with the West Australian Mine Closure Guidelines and approach which the Territory Government has been referring to as applicable.

We strongly urge the Territory Government to consider achieving consistency with one of the other major mining legislative frameworks in Western Australia or Queensland to ensure that critical information is submitted with an application for a mining title. For example, see requirements of sections 245, 317J and 317N of the QLD Mineral Resources Act.

3.9. Additional reasons for the Minister to revoke mining licences should be included.

The EP Bill provides that the Minister may revoke a licence for any of the reasons in clause 124ZZ (a)-(d). The Land Councils consider that additional reasons should be included for revocation, including:

- threatened non-compliance of environmental requirements; and

- threatened unauthorised environmental harms.

This would ensure that the regulatory regime is *proactive*, rather than *reactive*, in meeting its stated objectives.

3.10. There should be stronger provisions for comprehensive and costed rehabilitation and closure plans.

The rehabilitation and closure provisions in the EP Bill are deficient. Mine closure planning is recognised industry-wide as the primary regulatory tool to ensure that the public is not left with the burden of legacy mines and long-term care and maintenance mine sites. Adequate mine closure planning relies on a binding requirement for a fully costed rehabilitation and closure plan as part of the approvals process, and regular review throughout the life of the mine.

We are concerned that section 40(2)(g) of the Mining Management Act, which is proposed to be repealed by the EP Bill, will have no adequate replacement. This is a significant omission because:

- Section 40(2)(g) requires a mining management plan to include a plan and costing of closure activities. However, we note that inadequacy of this requirement as there is no requirement that such a plan be reviewed regularly throughout the life of the mine, including with the involvement of Traditional Owners.

- Clause 124N of the EP Bill provides that a mining licence issued for all mining activities relating to mining operations applies to any phase of mining activity associated with the mining or processing of minerals, including closure of the mining site and surrender of the related mining titles. This is not sufficient.

The Land Councils have repeatedly submitted on the necessity of rehabilitation and closure plans at the commencement of a mining project.[33] This is consistent with the West Australian Mine Closure Guidelines and approach and industry best practice.

The EP Bill must include a mandatory requirement to commission and develop a fully costed closure plan as part of the approvals process. This should be reviewed regularly throughout the life of a mine, including with the involvement of Traditional Owners.
The EP Bill must also:

- include mechanisms to ensure that the financial and technical requirements of mining operators to deliver rehabilitation requirements is assessed during the approvals process;[34]

- include specific requirements for the Minister to consider an operator's history of compliance with legislation and breaches of agreements with Traditional Owners, and track record of Aboriginal employment and contracting;

- include mechanisms to assess the financial and technical capacity of applicants to fulfil all rehabilitation and remediation obligations as specified in the mining licence and in any mining closure plan;[35]

- require that mine closure plans include financial provisioning for closure throughout production and operations (not merely unexpected closure), with security bonds calculated based on detailed mine closure plans as adjusted over time. This is consistent with the internal standards of most major resource companies; and

- require that plans, prepared in accordance with guidelines published by the Territory Government, form part of the binding compliance framework for a mining project. This would be consistent with the West Australian framework.[36]

Finally, the EP Bill fails to clarify portfolio responsibilities, in that, the Territory Government's feedback summary report of the consultation paper 'Regulation of mining activities environmental regulatory reform' (**feedback summary report**) notes that '*it will be the responsibility of DEPWS to ensure appropriate planning for, and completion of, remediation and rehabilitation requirements. It will be the responsibility of [Department of Industry, Tourism and Trade], acting on the information from DEPWS, to undertake the administrative processes associated with mine closure'.*

However, the Land Councils are not aware that Department of Industry, Tourism and Trade (**DITT**) has any robust administrative processes associated with mine closure

[33] See, for example, CLC and NLC joint feedback on the Mineral Development Taskforce Final Report dated 11 August 2023.
[34] Clause 44A(3) of the EP Bill would effectively allow the Minister to discount consideration of whether the applicant has previously failed to comply with licence conditions or health, safety and environment legislation.
[35] For example, a requirement could be included under clause 124ZZM(2) that the application be accompanied by supporting technical and financial information.
[36] The Western Australian Government has approved "*Statutory Guidelines for Mine Closure Plans"* under section 700 of the *Mining Act 1978* (WA) identifying the form and content required in a mine closure plan. These guidelines provide clarity and consistency.

and has not overseen any projects to relinquishment on the basis of closure certification.

We submit that closure certification should logically sit with the environmental regulator with only the very last step of cancellation of the tenement remaining with DITT under the Mineral Titles Act.

3.11. Provisions around mining securities should be strengthened.

The Land Councils are concerned by the provisions in the EP Bill regarding mining securities including that the EP Bill:

- makes no change to how mining securities are calculated;
- only allows for the Minister or Chief Executive Officer to make a claim on mining security;
- fails to provide for Traditional Owners' and local communities' review of the security bonds when Traditional Owners and local Aboriginal communities often bear the brunt of negative externalities associated with poorly managed resources projects;
- does not improve transparency around calculations of securities; and
- recognises that a security bond may need to be retained beyond the term of a mining licence to meet post-closure monitoring and reporting requirements.[37] However, it does not extend to circumstances where remediation may be required.

The Land Councils have consistently raised concerns about how mining securities are calculated. Accurate calculation is dependent on adequate mine closure planning. We accordingly submit that the EP Bill must include:

- robust and risk-based mechanisms and requirements for ongoing monitoring and adjustment, and corresponding adjustment of costs and recalculation of securities;
- requirements to publish the methodology used to calculate the security bond amounts;
- requirements to publish the obligations in the environment management plan or environmental impact statement that the mining security underpins;
- clear mechanisms to allow Traditional Owners to:
    a. require security to be called on and applied to the rehabilitation. This is particularly essential in light of the Territory Government's record of rehabilitation attempts that have not been completed to the satisfaction of Traditional Owners, such as at Rum Jungle;

[37] Clause 132C(9), EP Bill

b. provide input into regular reviews of mining securities, with the outcomes of such reviews made public; and

c. request a review of securities on the basis of future long-term environmental impacts and associated social impacts;

- a form of clause 132C(9) which includes the retention of securities until any required remediation is completed.

3.12. Provisions regarding mines in care and maintenance should be strengthened.

Clause 124Z provides that conditions may be imposed on a licence in relation to a care and maintenance period. However, there is nothing in the EP Bill about the necessity of preparing a detailed care and maintenance plan.

The Land Councils urge the strengthening of the EP Bill in this regard because:

- Mines in care and maintenance are often a prelude to insolvency and unmanaged closure. They present a long-term imposition on the environment, traditional owners, taxpayers and the Territory Government.

- There are already multiple mines in care and maintenance in the Territory, including in:

  a. The NLC's region:

     - Nobles Nob (Aboriginal land)
     - Warrego (land subject to native title)
     - Gecko (land subject to native title)
     - Harts Range Garnet Mine (land subject to native title)
     - Jervois Mine (land subject to native title)
     - Edna Beryl Gold Mine (Aboriginal land)
     - Twin Bonanza gold mine (Aboriginal land)
     - L6 Surprise Oil Field (Aboriginal land)

  b. The NLC's region:

     - Browns Oxide (Aboriginal land)
     - Esmeralda Gold Project (land subject to native title)
     - Kazi Gold Project (land subject to native title)
     - Mt Porter (land subject to native title)
     - Nathan River Resources Project (land subject to native title)

- Roper Valley Iron Ore (status uncertain) (Aboriginal land and land subject to native title)
- Bootu Creek Mine (land subject to native title).

We submit that mines in care and maintenance must be actively managed. The EP Bill should include a requirement that the operator be notified when the mine goes into care and maintenance. Once notified, the following should occur:

- The operator must be required to prepare and regularly review and update a care and maintenance plan that identifies and addresses how environmental risks will be managed. The feedback summary report notes that '*consideration will be given to developing, in consultation with stakeholders, criteria to guide decisions by operators and regulators about when it is appropriate for mining operations to enter and remain in care and maintenance periods. The Departments currently consider that such criteria would be most appropriately reflected in policy, rather than legislation*'. The Land Councils do not agree with this position.

  While the Bill provides that conditions may be imposed on a mining licence in relation to a care and maintenance period,[38] this is not a substitute for a detailed care and maintenance plan.

- The care and maintenance plan should include an expected duration (no longer than 5 years), after which period:

  a. the company must either commence closure or submit for approval a comprehensive updated care and maintenance plan; and

  b. the Territory Government should be able to reject the care and maintenance plan.

- Traditional Owners must be consulted in relation to the care and maintenance plan before it is approved.

- The regulator should actively and regularly consider the likelihood of the operations being a stranded asset and should have the ability to force the operator to decommission and rehabilitate if care and maintenance status is not genuine.

3.13. Public reporting requirements should be improved.

The EP Bill contains weak public reporting requirements. The Land Councils consider that this is critical to the effectiveness of the proposed new regulatory framework.

The EP Bill does not require public reporting of:

- the effectiveness of compliance monitoring and enforcement activity. Under clause 124Y(2), a condition imposed on a mining licence may require a report to the Minister on the operator's compliance with the mining licence and with any other requirements in

[38] Clause 124Z, EP Bill

relation to the licence. There is no requirement that such reports received by the Minister be made publicly available; and

- all applications, information about the applicant's capacity, the outcome of decisions and estimates of reserves, unless these are reports submitted in compliance with a registration or licence condition.[39]

The Land Councils submit that there must be clear legislative requirements for this information to be publicly available.

3.14. Enforcement and compliance measures need to be strengthened and funded accordingly.

The EP Bill provides that compliance with a performance improvement plan is enforceable.[40] However, the Minister must not commence a civil or criminal proceeding in relation to an alleged contravention of the conditions of a mining licence that relates to a matter covered by a performance improvement program while the performance improvement program is in place.[41]

The Land Councils have concerns with this approach, particularly given that there are numerous steps that must be taken before the Minister can terminate a performance management program (see clause 124ZV). We submit that:

- the Territory Government must provide clear guidance on how third parties, including Traditional Owners, can report contraventions;

- a proponent's entry into a performance improvement plan should be a trigger to review the value of a mining security; and

- it is essential that DEPWS is adequately funded to undertake compliance and enforcement action to support implementation of the Bill.

3.15. Provisions regarding best practice progressive rehabilitation should be included.

The Land Councils request more detailed information on:

- how progressive rehabilitation will be implemented, including through legislation or policy; and

- how standard conditions will relate to progressive rehabilitation, if at all.

Ongoing and progressive rehabilitation is recognized as best practice.[42] However, the only reference to progressive rehabilitation is in clause 124W(c) of the EP Bill, which provides:

> conditions imposed on an environmental (mining) licence may include any conditions that are necessary to manage the environmental impacts associated with the mining

[39] The EP Bill requires that all registration and licence conditions, and all reports or other material submitted in compliance with a registration or licence condition, be publically available.
[40] Clause 124ZZW, EP Bill
[41] Clause 124ZY, EP Bill
[42] *Productivity Commission, Resources Sector Regulation, Study Report (2020) (Leading Practice 7.11)*

> activities including requiring the mining operator to...for any area of a mining site where no further mining activity is proposed- prepare and implement rehabilitation and closure plans that maximise the progressive rehabilitation of the area as soon as practicable after mining activity ceases.

No further information has been provided. The EP Bill does not:

- include a definition of progressive rehabilitation;
- include strict, enforceable standards for:
  a. progressive rehabilitation; and
  b. best practice mine closure planning
- mandate specific progressive rehabilitation targets for all mining operations;
- require development approvals for mining projects to include conditions relating to progressive rehabilitation;[43]
- require that mining and exploration tenure renewal is dependent on delivery of progressive rehabilitation;
- amend all mine operations' permits to include fixed, non-negotiable rehabilitation ratios that are maintained through the life of the mine;
- impose financial penalties on companies for failing to undertake progressive rehabilitation.

3.16. Transitional arrangements are inadequate.

Our view is that the transitional arrangements are not sufficient to pave the way for the draft bills to be passed in their current form. This is because:

- Several large operations will head into closure after many decades of operation in the next 5 to 10 years.
- If the draft bills are passed, the unintended consequence will be that they are required to obtain a new mining licence very close to the final years of their operations.

The preferable course is to ensure that both the new regulatory framework is well understood and supported *prior* to coming into effect. This will avoid a protracted transitional period.

4. DRAFT LEGACY MINES BILL

4.1 The Legacy Mines Bill must comply with the Land Rights Act and the Aboriginal Land Act regarding entry onto Aboriginal land to carry out remediation activities.

[43] The provision in clause 124W(c) of the EP Bill is discretionary.

Similar to our comments in respect of clause 124ZZZM(7) of the EP Bill, the Land Councils urge the Territory Government to:

- comprehensively set out its view as to the interaction between clause 13 of the Legacy Mines Bill and the Land Rights Act;
- give Land Councils a chance to respond; and
- amend clause 13 of the Legacy Mines Bill to ensure compliance with the Land Rights Act.

This must occur *prior* to Parliament's consideration of the Legacy Mines Bill.
The Legacy Mines Bill proposes to allow a person to enter land or premises to allow a person to enter land or premises to carry out remediation activities, despite the land being Aboriginal land, without complying with the Land Rights Act and Aboriginal Land Act.[44]

We repeat our submissions above. In summary:

- Section 73(1)(b) of the Land Rights Act does not provide that the Territory Government may make laws allowing extensive access for remediation activities on Aboriginal land.
- An entry for that purpose and activity would detract from the rights conferred upon an Aboriginal Land Trust by the fee simple grant, and alter the scheme of the Land Rights Act for conferring rights on others to enter and use Aboriginal land.

4.2 The definition of 'legacy mines' is not sufficiently targeted.

The Land Councils are concerned that:

- The Legacy Mine Bill includes an insufficiently nuanced definition of 'legacy mines' because by simply referring to whether or not a security is held, the definition will potentially capture large high risk sites such as Rum Jungle and Redbank Mine.[45]
- Clause 11 of the Legacy Mines Bill makes provision for the Chief Executive Officer to publish a report giving details on the expenditure of money from the Mining Rehabilitation Fund. However, this does not include a requirement to detail any remediation work conducted.

We submit that:

- The definition of 'legacy mines' should include criteria as to scale and risk and be confined to smaller artisanal type workings and infrastructure.
- The less onerous requirements in this Bill should be expressly confined to smaller low risk sites.

[44] Clause 13(5).
[45] The NT holds no security for Ranger Uranium Mine and this definition would therefore apply to the Ranger Uranium Mine as an unintended consequence.

- Mining remediation levy and mining remediation fund should be accompanied by requirements for ongoing monitoring of a company's financial status, to ensure early identification of risk.

- A report by the Chief Executive Officer under clause 11 of the Legacy Mines Bill should include the details of any remediation work conducted.

4.3 Regulations for the Legacy Mines Bill must be made available for comment.

The Legacy Mines Bill states that the regulations may provide for several key matters, including matters in relation to the Mining Remediation Fund.[46] However, the draft regulations have not been published for comment and submissions.

It is critical that the draft regulations be released for public consultation prior to passage of the legislation. The Land Councils cannot assess the overall impact of the Legacy Mines Bill without any awareness of the content of such an important piece of the legislative puzzle.

The Territory Government has not provided an adequate opportunity for consideration of key matters that may be legislated but not subject to Parliamentary oversight. We request an opportunity to comment on any draft regulations before they are made.

4.4 DEPWS should be responsible for environmental management and rehabilitation of legacy mines.

We are concerned that responsibility for the management of legacy mines remains with DITT. The definition of a legacy mine site[47] currently includes large and high risk sites such as the Redback Mine and Rum Jungle.

DEPWS should be responsible for the environmental management and rehabilitation of legacy mines while DITT undertakes the role of proponent and accesses the remediation funds.

4.5 Remediation activity must be subject to statutory approvals.

The Legacy Mines Bill permits a person to carry out remediation activity without obtaining statutory approvals as prescribed by regulations.[48] The ambit of this provision is unclear.

The Territory Government has a poor record of rehabilitation outcomes to date. This is exemplified by repeated failed rehabilitation attempts at Rum Jungle. Consequently, the Land Councils cannot support remediation activities being carried out without:

- prior environmental impact assessment and environmental approval. For example, DITT currently holds an environmental approval for remediation works to be undertaken at Rum Jungle;

- sacred site and cultural heritage approval – see paragraph 2.2; and

[46] Clauses 7(3) and 19(1), Legacy Mines Bill.
[47] Clause 4, Legacy Mines Bill.
[48] Clause 19, Legacy Mines Bill.

- approval for a water licence under the *Water Act 1992* (NT).

4.6 The impact of the Legacy Mines Bill on specific sites is unclear.

The NLC requests further information on how the proposed legislative amendments will affect the following sites:

- Ranger Uranium Mine: The role of the Territory Government is limited to particular provisions under the Mining Management Act, which is proposed to be repealed with these reforms.

- Rum Jungle: Given that an environmental approval has been issued, and accordingly, ongoing environmental oversight is critical, the NLC considers it appropriate that DEPWS be responsible for environmental management of Rum Jungle. It should not be included within the definition of a 'legacy mine' site or subject to the Legacy Mines Bill.

- Redbank Mine: The NLC does not support the application of provisions that provide exemptions from approvals in the Legacy Mines Bill to this site. The standard of the remediation works required means that DITT should be subject to the EP Act and should obtain a mining licence. Independent assessment by the NT EPA will provide greater public confidence in the commitment of DITT to independently verifiable rehabilitation outcomes.