



Environmental Defenders Office

4 August 2025

Mining Division
Department of Lands, Planning and Environment

By email: mineralinfo.dlpe@nt.gov.au

Dear Mining Division,

Proposed changes to risk criteria and standard conditions for exploration and extractive operations

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the draft revised risk criteria and standard conditions (**RCSC**) for exploration and extractive operations under the new environmental licensing framework for mining activities under the *Environment Protection Act 2019* (**EP Act**).

In July 2024 EDO provided an extensive submission to the consultation on the draft of the risk criteria and standard conditions which are now under review. That submission is **enclosed**. The recommendations made are still relevant to the current review and should be read as forming part of this submission.

Overarching comments on proposed changes

We remain concerned that the overarching legislative framework, together with the (current and proposed) RCSC, is not fit for purpose to protect the environment, community, and future generations of Territorians. The proposed changes to the RCSC wind back certain specific environmental protections from a framework that is already overly permissive and insufficiently detailed.

In particular, we are concerned that the proposed RCSC for exploration and for extractive operations make changes to:

1. **allow exploration and extractive operations in the Alligator Rivers Region** under a standard conditions licence, by removing the current prohibition on this;
2. **allow for uranium mining or mining relating to naturally occurring radioactive materials** to occur under a standard conditions licence by removing the current prohibition;
3. **significantly weaken protections for native vegetation**, including sensitive or significant vegetation, under standard conditions licences; and

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4. **enable mining operations that will interfere with a waterway or discharge waste to water** to occur under standard conditions licences so long as they have a relevant permit or licence under the *Water Act 1992*.

We **oppose** these changes and discuss them further below.

1. Removal of protections for Alligator Rivers Region

We are particularly concerned that the proposed RCSC for both exploration and extraction completely removes current protections for the Alligator Rivers Region.

The current RCSC prohibit (at condition 5) mining exploration and mining activity in or affecting the Alligator Rivers Region as defined in section 3(1) of the *Environment Protection (Alligator Rivers Region) Act 1978* (Cth). This has been deleted from the proposed RCSC, with the effect that mining exploration and extraction will be permitted in the Alligator Rivers Region under standard conditions licences.

The impact of this change is compounded by the proposal (discussed below) to also allow mining involving uranium or naturally occurring radioactive material under standard conditions licences.

Recommendation 1: the proposed RCSC be amended to reinstate the prohibition on mining activity in or affecting the Alligator Rivers Region.

2. Removal of protections relating to uranium or naturally occurring radioactive material

The current RCSC prohibit (at condition 4) the mining of uranium or naturally occurring radioactive materials under standard conditions licence. Proposals to do so would currently trigger a requirement for a modified or tailored condition licence.

The proposed RCSC remove this prohibition, and instead require (at proposed exploration condition 11 and extractive operations condition 10) that any activity involving naturally occurring radioactive materials (and, for exploration, uranium) is accompanied by a radiation management plan.

This is an inappropriately lax way in which to treat high risk mining activities, and risks significant and long lasting environmental and health impacts. Standard condition licences should not be made available for such activities and a full environmental impact assessment must be required.

Recommendation 2: the proposed RCSC be amended to reinstate the prohibition on mining activity involving uranium or naturally occurring radioactive materials.

3. Removal of protections for sensitive or significant vegetation and weakening of protections for native vegetation

Risk criteria

The proposal to remove the risk criteria that the mining activity is not located in an area of, and does not impact, sensitive or significant vegetation is a significant cause for concern. The effect of this is that projects with these impacts will no longer be automatically required to obtain a tailored condition licence, and that vegetation that ought to be protected is not automatically excised from the mining activity area for standard condition licence applications.

This change will allow activities to have an impact on sensitive and significant vegetation without being required to obtain a tailored condition licence, necessitating an assessment of that impact and without conditions placed on the licence to manage the specific impacts. This is contrary to the objects of the EP Act.

Recommendation 3: the proposed RCSC be amended to reinstate the current risk criterion protecting sensitive or significant vegetation.

Conditions

In addition to removing the risk criterion relating to mining in or with an impact on sensitive or significant vegetation, the proposed RCSC remove a number of conditions protecting sensitive or significant vegetation and protecting native vegetation more broadly. The proposed conditions are significantly weaker than current conditions.

The proposed RCSC only protect sensitive or significant vegetation insofar as it is associated with certain features (listed at proposed extractive operations condition 14 and exploration condition 15) such as streams, wetlands, rainforest, mangroves, sandsheet heath, caves, sinkholes, springs, and groundwater dependent ecosystems.

In contrast, the current RCSC contain conditions prohibiting the mining activity from occurring within a 250m buffer from the outer edge of *any* area or instance of sensitive or significant vegetation (exploration condition 9; extractive operations condition 8), and specifies that any other clearing of native vegetation cannot impact on sensitive or significant vegetation (exploration condition 10(b)(i); extractive operations condition 9(b)(i)). These protections are removed from the proposed RCSC.

The proposed RCSC conditions relating to land clearing (exploration condition 10(b); extractive operations condition 12) are generally weaker than contained in the current RCSC – clear prohibitions on impacts on wetlands and wildlife corridors (e.g. current extractive operations condition 9(b)(v)-(vii)), for instance, have been removed.

In addition, the language used in a number of conditions (such as exploration conditions 13 and 14; extractive operations conditions 12 and 13) is almost so vague as to be meaningless, requiring that clearing of native vegetation “respond to” a number of matters such as the present of threatened wildlife and essential habitats. This term is not defined in the RCSC or in the NTPS Land Clearing Guidelines. It is not sufficiently clear to enable mining operators to understand their responsibilities or for regulators to take effective enforcement action, and should be replaced by (for example) “does not impact on”.

Recommendation 4: the proposed RCSC be amended to reinstate the current conditions protecting sensitive or significant vegetation and to strengthen conditions relating to land clearing.

4. Standard condition licences now permitted for activities interfering with waterways or discharging waste to water

The risk criteria for both exploration and extraction have been revised to exclude operations that will interfere with a waterway if they hold a permit to do so, from the risk criteria. This means that mining that would, under the current RCSC, be required to apply for a tailored condition licence

for that reason would not be required to do so under the proposed RCSC. This effectively shifts the type of licence required for such activities to a less restrictive licence.

A similar criterion has been added with respect to discharge of waste to water- if a waste discharge licence authorises such waste, the operation meets the criterion and therefore may only be required to obtain a standard condition licence. In this way, operations with greater impacts on waterways are permitted to be licenced under less restrictive, standard condition, mining licences.

Recommendation 5: the proposed RCSC remove the exceptions to exploration and extractive operations risk criteria (respectively criteria 4 and 5, and criteria 3 and 4) with respect to activities conducted in accordance with a licence or permit under the *Water Act 1992*.

Minor matters of drafting

In addition to the substantive issues raised above, we note the below

1. It is unclear why the term “extractives operator” is now used in the extractive operations RCSC, rather than “mining operator”, which is the term used in both the EP Act and the Mining Act. It is particularly perplexing given the proposed RCSC defines “extractives operator” as meaning the same as “mining operator” under the EP Act. It is far better and simpler to use the same term.
2. The explanatory notes in the exploration and extraction RCSC under the Risk Criteria and Standard Conditions headings state “If the proposed mining activity cannot meet [any of the risk criteria/ one or more standard conditions], a tailored condition environmental (mining) licence will be required.” We suggest that “does not” is more precise than “cannot”.
3. The way in which such sensitive or significant vegetation is referred to in the exploration and extractive operations RCSC documents is inconsistent. It is not clear whether this is a deliberate drafting choice or an error. For example: “sensitive or significant vegetation” is defined, but the definition variously refers to “sensitive and or significant vegetation”; “sensitive/significant” vegetation. Condition 14 (extractive operations) and 15 (exploration) refer to sensitive/significant vegetation associated with various landscape features. If this is not intentional it should be addressed.

Opportunities to strengthen RCSC

The effectiveness of the RCSC in mitigating environmental harm requires that sufficient baseline data about the relevant environment is available to the Department, the proponent, and the community prior to application for a licence and especially before any disturbance. Several of the conditions of the current and proposed RCSC are framed around whether the activity is in or has an impact on particular landscape and ecological features (such as specific vegetation communities, springs, sink holes, or waterways). These features must be thoroughly identified and mapped, and baseline data obtained, in order for the RCSC to function as intended. However, there are no clear requirements in the current or proposed RCSC to ensure that adequate baseline data is available, or specific and measurable criteria proponents must meet to ensure baseline data and evidence of pre disturbance conditions are gathered.

Similarly, the effectiveness and enforceability of the RCSC are hampered by vague language (such as “responds to”) and very broad criteria. Conditions should be prescriptive and include explicit criteria by which compliance can be measured.

There are significant opportunities to strengthen the risk criteria and standard conditions for both exploration activities and extractive operations, to better address the environmental risks and impacts of these operations, ensure conditions are comprehensive, measurable and enforceable and prevent current and future Territorians from being burdened with the destructive legacies of mining. These are discussed in detail in the **enclosed** submission.

Yours sincerely,

Environmental Defenders Office



Rachael Chick

Senior Solicitor

Reference number: PR-01791

Enclosure: EDO Submission on the draft risk criteria and standard conditions – exploration and extractives – environmental regulation of mining under the *Environment Protection Act 2019 (NT)*, 17 July 2024



Environmental
Defenders Office

**Submission on the draft risk criteria and standard
conditions – exploration and extractives –
environmental regulation of mining under the
*Environment Protection Act 2019 (NT)***

17 July 2024

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Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

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Submitted to:

Department of Environment, Parks and Water Security

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Acknowledgement of Country

The EDO recognises First Nations Peoples as the Custodians of the land, seas, and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and emerging, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through both Western and First Laws. In providing submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonisation.

Executive Summary

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the draft risk criteria and standard conditions for exploration and extractive operations under the new environmental licensing framework for mining activities under the *Environment Protection Act 2019* (**EP Act**).

Undoubtedly, some level of mining activity in the Northern Territory (**Territory**) is necessary in an era of runaway climate change and as we decarbonise. However, in light of the ongoing and anticipated increase in mineral exploration and mining in the Territory, it is imperative that we promote a regulatory environment that supports healthy and sustainable ecosystems. Even where the individual impact of an extractive activity, such as a mineral exploration, may be minimal, the cumulative impacts of mining resulting from the aggregation and interaction of impacts of multiple projects, may produce substantial environmental damage.¹ Environmental regulations must be future-proofed for not only individual projects, but the significant number of projects which are anticipated in the Territory.

These crucial licensing frameworks being implemented in the Territory should be informed by the best available science, and result in clear, consistent and defensible outcomes which protect the environment and the community. In their present form, both the risk criteria and the standard conditions are inadequate.

Many of the concerns we raised in our submission on the Exposure Draft to the *Environment Protection Legislation Amendment (Mining) Bill* (**Exposure Draft Submission**) were not addressed in the legislation which has been enacted.² Nevertheless we consider that there are significant opportunities to strengthen the risk criteria and standard conditions for both exploration activities and extractive operations, to better address the environmental risks and impacts of these operations, ensure conditions are comprehensive, measurable and enforceable and prevent Territorians from being saddled with the destructive legacies of mining. Without greater rigour being introduced to the proposed framework, we remain concerned that the regulatory scheme will fail to provide outcomes for the environment and for communities.

We remain concerned by the truncated timeframes associated with this consultation, noting that the scheme has already commenced and the government is soon to enter caretaker mode for the upcoming election. We are also disappointed with the apparent failure of the Territory Government to undertake on-the-ground consultation with communities most affected by mining operations.

We make the following detailed recommendations as set out below.

¹ Daniel M Franks, David Brereton and Chris J Moran (2010) 'Managing the cumulative impacts of coal mining on regional communities and environments in Australia', *Impact Assessment and Project Appraisal*, 28(4) 300, 312.

² Environmental Defenders Office, [Submission on the Exposure Draft for the Environment Protection Legislation Amendment \(Mining\) Bill](#) (18 September 2023).

Summary of Recommendations

1. Approved forms for licence applications should include prescriptive requirements about the work operators must submit for licence applications in all tiers, informed by best practice. This should include:
 - a. Requirements to carry out robust environmental risk assessment, including the development of impact pathway diagrams (**IPDs**); and
 - b. Details of the proposed environmental protection management system for the mine site.
2. The standard conditions and risk criteria should include explicit measurement criteria.
3. Before finalising the risk criteria and standard conditions, the Department must:
 - a. audit what baseline data is available and the limitations of available data;
 - b. determine how those datasets fit in with the proposed criteria and conditions;
 - c. specify what the measurement criteria / datasets operators should refer to in order to assess where they fit in the licensing framework and their ability to comply with conditions; and
 - d. clearly stipulate the kinds of desktop studies and fieldwork verification which operators are expected to undertake and provide to the Minister in relation to different sensitive receptors to inform her decision about what tier and conditions should apply to a particular activity.
4. The standard conditions should incorporate references to technical standards and guidance representing best practice in managing environmental risk for different environmental factors.
5. The standard conditions should include more prescriptive and systems-based conditions, as well as outcomes-based conditions, to provide greater certainty, clarity and efficiency for stakeholders about what is expected of proponents, and promote transparency and accountability.
6. Qualifications in the risk criteria that require a “significant impact on the environment” should be removed.
7. Draft exploration criteria 1 and draft extractive criteria 1 should be amended to account for cumulative impacts across multiple mining tenements.
8. Clarity should be provided on what is meant by “*at any one time*” within the risk criteria, accompanied by a strengthening of requirements around rehabilitation and closure planning (see further below and recommendations 32-36).

9. The risk criteria and standard conditions should not refer to or rely on the definition of “material change” set out in the *Interference with a Waterway Guideline*, which risks regulatory uncertainty.
10. Draft exploration criteria 2 and draft extractive criteria 2 should be drafted in a manner which aligns with the statutory definition of “interfere with a waterway” in s 4(1) of the *Water Act 1992* (NT).
11. Draft exploration criteria 2 should not be qualified by a requirement that there be a significant environmental impact.
12. The risk criteria for both exploration activities and extractive operations should state that the mining operator must not undertake mining activity which involves, targets or otherwise disturbs or is likely to disturb uranium or other naturally occurring radioactive materials.
13. The risk criteria for exploration activities and for extractive activities should state that the mining operator must not undertake blasting.
14. The risk criteria for both exploration activities and extractive operations should specify that the mining activity must not involve 24-hour operations, a brownfield mine site or a legacy mine site, wet processing or dredging.
15. The risk criteria for both exploration activities and extractive operations should state that mining activity will not be located 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 section 9(4), 12 or 24 of the *Territory Parks and Wildlife Conservation Act 1976* (NT) including an area managed under ss 73 or 74 agreements;
 - c. land held by the Conservation Land Corporation;
 - d. Indigenous protected areas; or
 - e. sites of conservation significance.
16. The risk criteria for both exploration activities and extractive operations should state that the mining activity will not be located in wetlands, sinkholes and springs.
17. The risk criteria for both exploration activities and extractive operations should state that the mining activity must not have adverse impacts on:
 - a. matters of National Environmental Significance as articulated in the *Environment Protection and Biodiversity Conservation Act 1999* (Cth);
 - b. listed threatened species under the *Territory Parks and Wildlife Conservation Act 1976* (NT);

- c. Northern Territory fish qualifying for threatened species status; and/or
 - d. groundwater dependent ecosystems (whether terrestrial, aquatic or subterranean).
18. Include risk criteria (as well as standard conditions) which account for the impacts of activities on places of human habitation, including towns, remote communities, pastoral homesteads, homelands and outstations and preclude activities occurring within a certain minimum buffer zone. This should account for a greater buffer being necessary depending on the prevailing meteorological and geological conditions.
 19. Clearly identify the rationale behind the risk criteria (and standard conditions) for activities located adjacent to places of human habitation, and ensure (through inclusion of reasoning) that this reflects best practice, science-based policy.
 20. Outcomes-based standard conditions should include corresponding conditions requiring mining operators to monitor, review and report against environmental outcomes, at set timeframes, to both the Minister and the Department.
 21. Exploration and extractive operation report templates should be publicly released.
 22. Standard conditions must be clear, objective and capable of enforcement. Conditions should be revised to avoid the use of vague or imprecise language or conditions which are capable of multiple interpretations as to whether the operator has been compliant.
 23. Qualifications on the basis of materiality should be removed, particularly for those activities which will inherently result in environmental harm.
 24. If the risk criteria are strengthened in relation to cumulative impact as per Recommendation 7, then draft exploration condition 3 and draft extractive condition 3 should be revised in a commensurate way so only those operations with minimal disturbance are governed by standard condition licences.
 25. Bore work should not be subject to less scrutiny under the draft extractive conditions as is presently required under the Water Act.
 26. The standard conditions should include a buffer zone around sites of conservation significance and there should also be site buffers for other locations identified in Recommendation 17.
 27. The conditions should not authorise land clearing in reliance on operator-assessed, subjective standards for what extent and disturbance of clearing is appropriate. There must be clear, objective thresholds in the standard conditions, and native vegetation clearing must not be authorised under a standard condition licence.
 28. There should be an unqualified prohibition in the standard conditions for clearing mature trees and trees with hollows suitable for fauna habitat.
 29. There should be an additional standard condition prohibiting the creation of fauna traps.

30. Conditions relating to soils and surface water, groundwater and air quality should be strengthened, including to require management plans for environmentally risky areas.
31. Sand or gravel extraction from a waterway should not be permitted under the standard conditions.
32. The standard conditions require far greater prescription in relation to air quality and dust emissions.
33. Far greater prescription is required in the conditions with respect to closure and rehabilitation (across all tiers of licence). The conditions should require that mining operators:
 - a. develop and submit a rehabilitation plan upon commencement of the exploration activity OR a plan and costings of closure activities for an extractive operation, for approval by the Minister or their delegate, which:
 - i. includes clear, specific, achievable and measurable rehabilitation objectives and competition criteria;
 - ii. includes relevant baseline data and clear identification of ‘pre-disturbance conditions’;
 - iii. provides for effective rehabilitation of disturbed areas;
 - iv. provides for post-rehabilitation monitoring; and
 - v. is to be reviewed, updated and re-submitted to the Minister whenever material changes have been made;
 - b. implement and complete a rehabilitation and monitoring program; and,
 - c. submit of a final rehabilitation report and compliance statement showing how rehabilitation objectives have been met.
34. The conditions should require progressive rehabilitation of mining activities within catchment areas to occur prior to the start of the upcoming wet season.
35. There should be stringent timeframes and environmental controls around progressive rehabilitation, rather than relying on operator discretion.
36. There should be stringent timeframes and environmental controls around progressive rehabilitation. Conditions which allow operators to maintain areas intended for further mining activity so as to cause “*as little environmental impact as is reasonable in the circumstances*”, and to rehabilitate the area “*as soon as reasonably practicable*” are inadequate and leave too much to operator discretion.
37. The standard conditions should ensure that security bonds, which are mandatory under all licence tiers, be calculated based on the life of an exploration or extractive operation, and regularly revised and updated whilst activities under the licence are being carried out.

38. The standard conditions should require that operators provide the Minister and the regulator with details of the environmental protection management system for the site, which is then published on the public register. Other information which was required in Mining Management Plans under the *Mining Management Act 2001* (NT) (**MM Act**), such as a description of the mining activities and the organisational structure for carrying out the mining activities, should also be submitted under the standard conditions, and updated on a regular basis.
39. The standard conditions should include prescriptive conditions with respect to noise impacts, weeds, feral animals and fire management.
40. Whilst these should be done as a pre-condition to the granting of a Mining Licence or Environmental Approval, at a minimum, the standard conditions should require:
 - a. Investigation, mapping and approvals pertaining to the protection of sacred sites; and
 - b. Comprehensive cultural heritage assessments in consultation with Traditional Owners and the preparation of cultural heritage management plans.
41. The standard conditions, particularly for extractive operations, should require:
 - a. operators to have a plan for care and maintenance, which is updated regularly and specifically updated and approved by the Minister if a mine goes into care and maintenance;
 - b. Require operators to notify the Territory government and the public if a mine or any key part of a mine is entering into care and maintenance;
 - c. operators to manage a mine site in care and maintenance in a way that minimises environmental impacts; and
 - d. operators who remain in care and maintenance beyond a set period of time to take steps to fully close and rehabilitate the site (or otherwise transfer the site to an operator who has been assessed to have appropriate financial and technical capacity to continue operations or meet rehabilitation requirements.
42. The standard conditions should require that mining activities do not source their electricity needs from fossil fuels.

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Introduction

EDO welcomes the opportunity to comment on the draft risk criteria and draft standard conditions for exploration activities and extractive operations under the new environmental licensing framework for mining activities. Under that framework, which commenced on 1 July 2024, operators must hold an environment (mining) licence (**Mining Licence**) under the EP Act if they intend to undertake:³

1. exploration for minerals or extractive minerals, where those activities cause “substantial disturbance” of a mining site;⁴
2. extractive operations (broadly speaking, extraction or mining for soil, sand, gravel, rock or peat);⁵ or
3. mining operations.

The purpose of a Mining Licence is to prevent, minimise and monitor the environmental impacts of a mining activity in relation to any of the following stages of mining activity: planning and design, preliminary activities, construction and carrying out of works, operation, remediation and rehabilitation requirements, completion and closure of the mine site.⁶

This submission addresses:

- Overarching commentary and recommendations
- Specific feedback and recommendations in relation to the draft risk criteria
- Specific feedback and recommendations in relation to the draft standard conditions
- Other concerns and recommendations

EDO was one of several stakeholders consulted on a preliminary draft of the risk criteria and standard conditions for exploration in May 2024. Whilst some of our feedback appears to have been incorporated, overall, our recommendations remain applicable to these updated draft risk criteria and standard conditions for exploration, as well as the draft risk criteria and standard conditions for extractive operations. We are also concerned that some of the preliminary draft conditions and criteria have been watered down or removed in this version, meaning that some potentially very environmentally risky activities will not fall into the tailored condition licence tier.

³ Including various activities associated with exploration and mining – see generally the definition of “mining activity” in EP Act s 13A.

⁴ For the definition of “substantial disturbance”, see *Environment Protection Regulations 2020* (NT) (**EP Regulations**) cl 233R.

⁵ “Extractive mineral” is defined in s 10 of the *Mineral Titles Act 2010* (NT) (**Mineral Titles Act**) to mean “soil, sand, gravel, rock or peat” or another substance prescribed in the *Mineral Titles Regulations 2011* (NT). No substances are currently prescribed in those regulations.

⁶ EP Act s 124K and see ss 124M, 124N, 124P.

Analysis: Overarching commentary

Our feedback in this submission is made in the context of fundamental limitations and constraints inherent in the overall legislative scheme, which came into operation on 1 July this year. In our Exposure Draft Submission, we raised several concerns which were not addressed in the Bill which was ultimately introduced and passed. These included concerns around:

- the framework not requiring operators to provide the same level of detail which operators were required to provide in a Mining Management Plan when seeking approval under the *Mining Management Act 2001* (NT);⁷
- the significant amount of discretion inherent in the licensing scheme and the absence of mandatory minimum conditions for all Mining Licences stipulated in the legislation;⁸
- the failure to include a requirement that all mining operations have a fully costed life-of-mine closure plan from the inception of operations, based on clearly defined and approved closure criteria;⁹ and
- The failure to enshrine a framework which ensures security bonds are adequate to cover the full costs of rehabilitating mine sites for all disturbances across the life of the mine, including post-closure monitoring, maintenance and reporting.¹⁰

We refer to and continue to endorse our Exposure Draft Submission wherever applicable, the recommendations of which remain largely unaddressed.¹¹ Given the present gaps in the scheme, we are not confident that the licensing framework will achieve the intent of providing robust protections for the Territory's environment and communities. We are also disappointed that this stage of consultation has been similarly rushed and without adequate time or resourcing for on the ground consultation by government – this 6-week consultation period is taking place when the scheme has already commenced, and on the eve of the Territory election.

These crucial frameworks should be informed by the best available science, and result in clear, consistent and defensible outcomes which protect the environment and the community. In their present form, both the risk criteria and the standard conditions are inadequate. We provide detailed feedback with the aim of remedying these deficiencies.

In addition to the specific recommendations made throughout this submission, we also recommend that the Territory government develop model conditions for different types of mining activities, which can be adapted for modified and tailored condition licences. This will ensure greater transparency and regulatory consistency, given the high level of discretion and lack of prescriptive licence conditions inherent in the present scheme. We also re-iterate previous recommendations

⁷ Exposure Draft Submission 13-14.

⁸ Exposure Draft Submission 18-19. The only mandatory requirements are for operators to provide a mining security in the amounts or values and at the times required by the Minister; and to pay the mining levy payable by the operator under the *Legacy Mines Remediation Act 2024* (NT).

⁹ Exposure Draft Submission 15-16.

¹⁰ Exposure Draft Submission 17.

¹¹ For an analysis of key differences between the Exposure Draft and the *Environment Protection Legislation Amendment Bill 2023*, see EDO, "[Briefing Note: Mining regulation proposed for complete overhaul in the Territory](#)" (24 November 2023).

about the need to ensure that appropriate resources are provided to the Department to administer the scheme, including compliance and enforcement mechanisms, and the adoption of a full-cost recovery model.¹²

Environmental risk assessment and management

Best practice in environmental impact assessment (**EIA**) involves proponents preparing impact pathway diagrams (**IPDs**) as early as possible after the locations, extent and duration of proposed mining activities are identified.¹³ IPDs illustrate how the impacts of a proposal are predicted to adversely impact key environmental receptors, the potential pathways of impacts from sources to receptors, and how those pathways interact.¹⁴ The process of preparing and finalising IPDs helps an operator to determine where receptors are located based on readily available data, where additional field data is required, and to identify and refine their understanding of the likely risks to those receptors.¹⁵

This practice is equally appropriate in the environmental mining licensing framework, and even more so in a context where the majority of exploration and extractive operations are unlikely to be referred by a proponent to the Northern Territory Environment Protection Authority (**NT EPA**) for EIA and environmental approval, but where activities will inherently result in both individual and cumulative environmental harms. Robust environmental risk assessment, including the development of IPDs, should be a necessary pre-condition to applying for a Mining Licence. This will provide a basis upon which both proponents and the Minister can assess what tier of licence is appropriate and can be updated as the approved activity progresses.

In the absence of stipulation in legislation itself, the approved forms for licence applications should include prescriptive requirements about the work operators must undertake and submit, reflective of best practice, to enable informed decisions to be made.¹⁶ These could be more onerous when operators anticipate a higher category of licence is applicable, but all licence tiers must involve robust environmental risk assessment – this should not be limited to applications for modified or tailored condition licences as is presently prescribed in the legislation.¹⁷ We recommend the more detailed requirements and content for application forms be spelt out in the regulations rather than through non-statutory policy, as we have often seen in the Territory.

As we observed in previous submissions, the new licensing framework does not require the operator to provide the same kinds of information that were required in mining management plans that were submitted under the *Mining Management Act 2001* (NT) (**MM Act**), including details of the

¹² Exposure Draft Submission 29-30.

¹³ See generally: Commonwealth of Australia, "[Information Guidelines Explanatory Note: Using impact pathway diagrams based on ecohydrological conceptualisation in environmental impact assessment](#)" (2024), Report prepared for the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development through the Department of Climate Change, Energy, the Environment and Water. **Error! Hyperlink reference not valid.**

¹⁴ Ibid 1.

¹⁵ Ibid 1-2.

¹⁶ Applications must be in the approved form per EP Act s 124ZE. The CEO may approve forms: EP Act s 292.

¹⁷ EP Act ss 124ZJ, 124ZK, 124ZL.

environmental protection management system for the site. As with the MM Act, the EP Act obliges operators to maintain an environmental protection management system¹⁸ – operators should be required to submit details of that system as part of an application for any tier of licence for consideration by the Minister, which is then published on the public register, and updated on a regular basis. This will also enhance assessment and oversight of environmental risk management on site.

Recommendations:

1. Approved forms for licence applications should include prescriptive requirements about the work operators must submit for licence applications in all tiers, informed by best practice. This should include:
 - a. Requirements to carry out robust environmental risk assessment, including the development of impact pathway diagrams (**IPDs**); and
 - b. Details of the proposed environmental protection management system for the mine site.

Measurement criteria, baseline data and technical standards and guidance

Relatedly, measurement criteria and guidance are central to:

- (i) assessment of whether the operator can meet the risk criteria and the standard conditions for an activity,
- (ii) determination of what kinds of licence conditions are necessary to regulate an activity, and
- (iii) assessment of whether the operator is compliant with licence conditions (whether standard or otherwise).

We understand that the Department will not be developing and releasing measurement criteria and guidelines to assess compliance with the standard conditions until after the conditions are finalised. We disagree that the finalisation or declaration of standard conditions is necessary before any measurement criteria and guidelines can be developed or consulted on. These criteria and guidelines are vital to the overall functioning of the licensing scheme and it is appropriate that they are consulted upon and subject to independent expert review before the scheme is operational. This extends to confirmation of how compliance with the risk criteria is intended to be measured. This material would also be useful to inform how operators develop IPDs and prepare information for the Minister to assess licensing applications.

Several of the risk criteria and the standard conditions as presently drafted are framed in terms of whether the activity is in or impacts upon sensitive receptors – for example, whether activity is located within key vegetation types (rainforest, vine thicket etc) or in proximity to sinkholes and springs. The effectiveness of the framework in mitigating environmental harm is going to depend

¹⁸ EP Act s 124ZE(d).

on the coverage and resolution of datasets measuring these receptors and the limitations of the available data.

The Department should:

- audit what baseline data is available and the limitations of available datasets (for example, in relation to where sensitive vegetation types are located);
- determine how those datasets fit in with the proposed criteria and conditions;
- specify what measurement criteria / datasets operators should refer to in order to assess where they fit in the licensing framework and their ability to comply with conditions; and
- clearly stipulate the kinds of desktop studies and fieldwork verification which operators are expected to undertake and provide to the Minister in relation to different sensitive receptors to inform her decision about what tier and conditions should apply to a particular activity.

None of the above is presently evident in the licensing framework and we recommend that these steps be undertaken before the framework is declared. This will promote the efficacy of the scheme and ensure consistency of environmental outcomes. It also guards against sensitive receptors being damaged because there is a paucity of existing data for the relevant receptor in the proposed project area.

Similarly, there is an absence of any reference to technical standards or guidance within these documents. At present, the draft standard conditions stipulate that the mining operator must carry out all mining activity “in accordance with good industry practice”,¹⁹ which is wholly insufficient. We would expect the Department to have considered which technical standards are relevant and what standards or methodologies represent best practice in managing environmental risk for different environmental factors, and to refer those things within the conditions themselves or as guidance notes. There are technical standards, policies and best practice guidance on crucial areas such as the storage, use and disposal of materials on site, the handling of mine wastage, the management of acidic, metalliferous and saline mine drainage, mine closure and rehabilitation, and so forth.²⁰ Mining operators will also necessarily be required to meet obligations in other Northern Territory legislation – these should be comprehensively referred to and cross-referenced in the standard condition framework. Without necessarily endorsing the suggested steps or guidance as representing best practice, we note that the Queensland standard conditions,²¹ for example, contain guidance notes for different conditions including references to possible steps to comply with conditions, technical standards and other regulatory requirements.

¹⁹ “[Draft standard conditions for exploration mining activities](#)” (**Draft exploration conditions**), 2; “[Draft standard conditions for extractive operations](#)” (**Draft extractive conditions**), 2.

²⁰ See, for example, Leading Practice Handbooks developed by the Commonwealth Department of Industry, in partnership with the Department of Foreign Affairs and Trade and in consultation with a range of stakeholders, including the Territory Government: <<https://www.industry.gov.au/publications/leading-practice-handbooks-sustainable-mining>>.

²¹ See: “[Eligibility criteria and standard conditions for exploration and mineral development projects](#)” (31 March 2016) Queensland Department of Environment and Heritage Protection, (**Queensland standard conditions and eligibility criteria**) p 4-15.

In general, the new licensing scheme does not contain the same level of prescriptive detail and statutory policies that operators are required to comply with under licence conditions in other jurisdictions, including in relation to topics such as mine closure planning and rehabilitation, work programs, activity reporting, undertaking consultation with landholders, and so forth.²² It is unclear whether the Territory Government is intending to rely on various non-statutory policies it has issued in the past around mining. The efficacy of the scheme overall would benefit from clear, prescriptive policies, based on best practice, which operators must follow. These should be given statutory force.

Including some level of prescription and measurement within the framework is particularly important given the range of potential players entering into the Territory's mining industry, which is entering near record levels of exploration expenditure amidst burgeoning demand for critical minerals.²³ New entrants will not necessarily have long-term or demonstrated experience in mining or established systems for environmental risk assessment or management and would benefit from detailed frameworks.²⁴

Recommendations:

2. The standard conditions and risk criteria should include explicit measurement criteria.
3. Before finalising the risk criteria and standard conditions, the Department must:
 - a. audit what baseline data is available and the limitations of available data;
 - b. determine how those datasets fit in with the proposed criteria and conditions;
 - c. specify what the measurement criteria / datasets operators should refer to in order to assess where they fit in the licensing framework and their ability to comply with conditions; and
 - d. clearly stipulate the kinds of desktop studies and fieldwork verification which operators are expected to undertake and provide to the Minister in relation to different sensitive receptors to inform her decision about what tier and conditions should apply to a particular activity.
4. The standard conditions should incorporate reference to technical standards and guidance representing best practice in managing environmental risk for different environmental factors.

²² See, for example, in relation to closure and rehabilitation: [‘Exploration Code of Practice: Rehabilitation’](#) (2022) NSW Resources Regulator; [‘Guidelines: Exploration and Prospecting Rehabilitation Guidance’](#) (December 2023) Government of Western Australia, Department of Mines, Industry Regulation and Safety; as to rehabilitation requirements for resource activities Queensland, generally, see [‘Surrender an environmental authority’](#) (11 January 2024) Queensland Government, Business Queensland.

²³ Northern Territory Government, Resourcing the Territory, [‘Record funding to boost exploration in the Territory’](#) (7 June 2024).

²⁴ Department of the Environment, [‘Outcomes-based conditions policy’](#) (2016), p 8-9.

An outcomes-based approach, alone, is not sufficient

We acknowledge the Department's regulatory preference to use outcome-based conditions, whereby mining operators identify and implement the controls required to achieve compliance, rather than the steps being prescribed in the conditions. This may explain the absence of measurement criteria being identified within the conditions themselves, as well as the lack of reference to technical standards or guidelines. As we acknowledged in our preliminary feedback, outcomes-based or performance-based regulatory approaches have been favoured by some regulators on the basis that they offer greater flexibility and more tailored responses to meet environmental outcomes.²⁵ At the same time, outcomes-based conditions are not appropriate in all circumstances, and will lead to poor environmental results if conditions are vaguely expressed, capable of multiple interpretations as to whether the steps operators have taken to comply are sufficient and/or where there are insufficient measurement criteria, baseline data or reporting mechanisms to demonstrate that particular impacts have been avoided.²⁶ These observations remain apposite for the draft conditions and risk criteria now the subject of consultation.

Overall, we consider that there is still an important role played by more prescriptive and systems-based conditions when regulating the environmental impacts of mining. Such conditions provide more certainty, clarity and efficiency for all stakeholders around what is expected of a proponent and project and promotes greater accountability and transparency. The need for these kinds of conditions is only underscored given the absence of other review and oversight mechanisms built into the legislative scheme, including limited public consultation rights, a lack of third-party merits review and no mandated statutory consultation on the standard conditions or changes to them.²⁷

With these overarching comments in mind, we provide specific commentary on the risk criteria and the standard conditions.

Recommendations:

5. The standard conditions should include more prescriptive and systems-based conditions, as well as outcomes-based conditions, to provide greater certainty, clarity and efficiency for stakeholders about what is expected of proponents, and promote transparency and accountability.

²⁵ See, for example, Department of the Environment, [Outcomes-based conditions policy](#) (2016).

²⁶ EDOs of Australia, [Productivity Commission Inquiry into Resources Sector Regulation](#) (9 November 2019) 14; Environmental Defenders Office, [Submission to the Productivity Commission in relation to the Draft Report on Resources Sector Regulation](#) (9 June 2020) 37-38.

²⁷ These issues are discussed broadly in previous submissions on the scheme, and noting that limited merits review rights in the Exposure Draft were removed from the final version of the Bill.

Feedback on the risk criteria

The risk criteria play a key role in the regulatory scheme, insofar as activities which cannot be brought within the risk criteria *must* be governed by tailored condition licences. It is therefore vitally important to get those criteria right.

A project which goes through a tailored condition licence process requires operators to provide both an assessment of the environmental risks and impacts of the activity and a rehabilitation plan or a “closure plan for the mining site and a costing of the proposed closure activities” (as applicable) when applying for such a licence.²⁸ The risk criteria can be strengthened in several ways, to ensure that projects of the highest environmental risk are appropriately placed in this highest licensing tier. Our recommendations in relation to the risk criteria are grouped by type of category, namely risk criteria based on:

- scale of activity
- nature of activity
- location of activity

We also make further general comments about the qualification in the risk criteria around certain activities requiring a “significant environmental impact”.

Unnecessary qualifications requiring “significant impact on the environment”

Several of the draft risk criteria for both exploration and extractive operations are qualified by a requirement that the specified activities “[have] a significant impact on the environment”.²⁹ This is presumably intended to reference the statutory definitions around impact and significant impact contained within the EP Act.³⁰

These definitions have particular statutory significance for the EIA process under the EP Act, which requires proponents to refer proposed actions to the NT EPA which have “*the potential to have a significant impact on the environment*”.³¹ Relevantly:

- if an EIA is required, this assessment process and the issuance of an Environmental Approval is intended to occur before a Mining Licence can be granted;³²
- an operator can simultaneously apply for a Mining Licence and refer their matter to the NT EPA for consideration of whether and what tier of EIA is required;³³

²⁸ EP Act ss 124ZE(d), (f), (g). For exploration, this is described as a “plan for the rehabilitation of any area of the mining site that is not required for an extractive operation or a mining operation”.

²⁹ [Draft declaration of risk criteria for exploration \(Draft exploration criteria\)](#) 1, 4; [Draft declaration of risk criteria for extractive operations \(Draft extractive criteria\)](#) 1, 2, 4.

³⁰ EP Act ss 10, 11.

³¹ EP Act s 49.

³² EP Act s 124ZH.

³³ Per s 124ZH(3), the Minister can consider the application for a Mining Licence while EIA is being carried out. The guidance materials issued by the Territory government in relation to the licensing scheme also envision that these applications can be made at the same time.

- if an EIA process is underway, then this pauses the clock for assessment of the licence application;³⁴ and
- any Mining Licence issued must not be inconsistent with, but could include additional or more prescriptive requirements, than an Environmental Approval.³⁵

The upshot of this framework is that the mining activities with the greatest degree of environmental risk should have both an Environmental Approval and a tailored condition licence.

We are of the view that incorporating a “*significant impact*” qualification in the risk criteria is redundant and allows for unnecessary operator discretion in assessing whether an impact is significant. The activities identified in the risk criteria are inherently risky to the environment and should therefore be subject to the highest tier of licensing, including comprehensive environmental risk assessment and rehabilitation and closure plans being submitted. We note that no similar qualifications appear, for example, in the Queensland eligibility criteria for exploration³⁶ and we are concerned by this threshold being introduced as compared with the preliminary draft conditions.

In addition, a stipulation that activities *have* a significant impact on the environment has the perverse outcome of signalling to operators that referral to the NT EPA is unnecessary when that referral would be required under the EP Act. As noted above, threshold for referral is an action that has the *potential* to have a significant impact on the environment – not that it *has* or *must* have such an impact. We are concerned that mining operators will be granted a modified condition licence, given the higher bar for impact set under the risk criteria, and then use that to justify a decision not to refer actions to the NT EPA. This risk is exacerbated by the scheme’s reliance on self-referral – whilst the NT EPA can call in an action,³⁷ and a statutory decision maker can refuse to decide an application until referral takes place,³⁸ these powers are rarely used.

Recommendations:

6. Qualifications in the risk criteria that require a “significant impact on the environment” should be removed.

Risk criteria based on the scale of the activity

Under the scheme, a Mining Licence may pertain to one or multiple mining activities,³⁹ and may be granted in relation to more than one mineral interest⁴⁰ provided that the mining operator is the title

³⁴ EP Act s 124ZM(2).

³⁵ EP Act s 124ZL.

³⁶ Department of Environment and Heritage Protection, *Eligibility criteria and standard conditions for exploration and mineral development projects – Version 2* (ESR/2016/1985) (Effective 31 March 2016) 3.

³⁷ EP Act ss 48, 49.

³⁸ EP Act s 50(2)(a).

³⁹ EP Act s 124ZE(2).

⁴⁰ Mineral interest is defined in s 4 of the EP Act by reference to mineral titles and non-compliant existing interests under the *Mineral Titles Act 2010* (NT) (**Mineral Titles Act**) as well as particular interests and

holder for each mineral interest or has been appointed by the title holder as the mining operator for that particular interest.⁴¹ The Act also does not preclude an operator holding multiple Mining Licences across a mine site.⁴² For example, it is not uncommon for a mining site to sit across several mineral titles or other types of mineral interests, and therefore, it can be anticipated that a mining operator may apply for a single Mining Licence regulating activities occurring across a couple of contiguous tenements. Conversely, a mining operator could also hold several licences pertaining to the different tenements on the one mine site.

Need to account for cumulative impacts

Given this flexibility in the licensing scheme, risk criteria which are based on the scale of mining activities must be framed in such a way as to reflect the cumulative impacts of exploration or extractive activity authorised on a mine site at any one time, irrespective of the number of tenements the site falls across, and to take in account which activities have already been approved on site. It is artificial to treat the environmental impacts as separate from each other or without the potential for greater cumulative impacts. Accordingly:

- Draft exploration criteria 1 should be qualified to confirm that exploration activity cannot exceed the thresholds cumulatively across the mine site upon which the activity is occurring, not simply on any one mineral title;
- Draft extractive criteria 1 should be qualified to confirm that each of the extractive activity thresholds set out in 1(i), (ii) and (iii) cannot be caused cumulatively across the mine site on which the extractive operation is occurring, not just on any one extractive mineral title. This is noting that an extractive operation may sit across multiple tenements.

The reference to the activities not causing substantial disturbance of more than 10 hectares, excluding access tracks, “*at any one time*” is also ambiguous – is this a reference to the total disturbance that will be authorised under the Mining Licence, or can there be a greater amount of disturbance across the duration of the licensed mining activity, provided that areas are progressively rehabilitated in a manner which limits substantially disturbed land to under 10 ha at any one time? If the latter is envisioned, then mandatory rehabilitation and closure planning must necessarily be a part of the scheme. This is discussed further below.

Recommendation:

7. Draft exploration criteria 1 and draft extractive criteria 1 should be amended to account for cumulative impacts across multiple mining tenements.

authorities granted under specific Acts, such as the *McArthur River Project Agreement Ratification Act 1992* (NT). See also the definition of “mineral title” under s 11 of the Mineral Titles Act.

⁴¹ EP Act s 124ZG(5).

⁴² EP Act s 124L(6).

8. Clarity should be provided on what is meant by “*at any one time*” within the risk criteria, accompanied by a strengthening of requirements around rehabilitation and closure planning (see further below and recommendations 32-36).

Risk criteria based on the nature of the activity being carried out

Impacts to waterways

The risk criteria for both exploration and extraction contain a requirement that the mining activity “*does not cause a material change to the bed, banks, course or flow of a waterway*”. In the case of extractive operations, this is qualified by a requirement that that this should not be done “*so as to cause, or likely cause, a significant impact on the environment*” (see further below). It is unclear whether the criteria is intended to pick up on the definitions of “*material change*” and “*waterway*” stipulated in the draft standard conditions for exploration and extractive operations.⁴³ If so, the definition of “*material change*” is defined by reference to the Territory Government’s non-statutory *Interference with a Waterway Guideline*, purported to be issued under the *Water Act 1992* (NT) (**Water Act**), and which defines material change as one that is “*noticeable, obvious, longer than the short-term and is capable of straightforward observation and measurement*”.

We previously made submissions about our concerns with the definition of “*material change*” when the Guideline was in draft. We noted that the definition of material change did not align with the intended purpose of the *Water Act* and risked regulatory uncertainty and recommended that requirements for changes to be “*noticeable, obvious*” and “*capable of straightforward observation and measurement*” be replaced with requirements that are more objective, clear and responsive to the legislative intent.⁴⁴ It is disappointing that this regulatory uncertainty has been imported into the mining licensing framework – this should be amended.

The risk criteria should also be drafted in a manner which, at a minimum, aligns with the statutory definition of “*interfere with a waterway*” under the *Water Act*, namely that a mining activity must not:⁴⁵

- (a) *cause a material change to the shape of a waterway.*
- (b) *cause a material change to the volume, speed or direction of the flow or likely flow of water in or into a waterway;*
- (c) *cause an alteration to the stability of the bed or banks of a waterway, including by the removal of vegetation.*

In addition, the risk criteria should incorporate a reference to mining activities which have an adverse impact on water quality. These recommendations are in addition to removing the requirement that there be a significant environmental impact.

⁴³ Draft exploration condition 14.

⁴⁴ Environmental Defenders Office, ‘[Submission on the Draft Surface Water Take – Wet Season Flows Polyc & Interference with a Waterway Guideline](#)’ (9 January 2023).

⁴⁵ Compare Water Act s 4(1) definition.

Overall, these changes will significantly reduce regulatory uncertainty and ensure that activities which impact the Territory’s precious free-flowing waterways are subject to appropriate scrutiny. Consistency with the *Water Act* and its intended purpose is also particularly important in circumstances where the EP Act envisions that conditions on a Mining Licence could be used to authorise or regulate the environmental impacts of a mining activity where an interference with a waterway permit would otherwise be required under the *Water Act*.⁴⁶

Recommendations:

9. The risk criteria and standard conditions should not refer to or rely on the definition of “material change” set out in the *Interference with a Waterway Guideline*, which risks regulatory uncertainty.
10. Draft exploration criteria 2 and draft extractive criteria 2 should be drafted in a manner which aligns with the statutory definition of “interfere with a waterway” in s 4(1) of the *Water Act 1992* (NT).
11. Draft exploration criteria 2 should not be qualified by a requirement that there be a significant environmental impact.

Targeting or displacement of uranium and other naturally occurring radioactive materials

The risk criteria should also stipulate that the exploration activities and extractive operations will not involve, target or disturb uranium or other naturally occurring radioactive materials. This was dealt with in the preliminary draft risk criteria EDO reviewed, and we are concerned that this no longer appears in the draft which has been circulated for public comment. Instead, the draft standard conditions for exploration provide, in effect, that operators cannot undertake exploration activity which causes, or would likely cause, material environmental harm because of uranium or naturally occurring radioactive materials.⁴⁷ A similar condition appears in relation to extractive operations.⁴⁸ Our separate concerns with how the standard conditions are qualified in terms of material environmental harm are discussed further below.

Exploring for uranium and other radioactive materials involves environmental, health and safety risks over and above those associated with other types of mining, by virtue of the harmful effects of radiation⁴⁹ – it is inappropriate that these kinds of operations are subject to anything below a tailored condition licence. Similarly, where extractive mining operations have the potential to displace radioactive materials during the operation, it is vital that this is stringently assessed and appropriately regulated to minimise environmental harm (including harms to human health).⁵⁰ This

⁴⁶ EP Act s 124Z.

⁴⁷ Draft exploration condition 4.

⁴⁸ Draft extractive condition 4.

⁴⁹ These harms are expressly acknowledged in Northern Territory guidance: Department of Primary Industry and Resources, [‘Exploration for Naturally Occurring Radioactive Materials in the Northern Territory’](#) (14 July 2016).

⁵⁰ See the broad definition of ‘environment’ in the EP Act s 6.

is particularly noting the ongoing legacies of uranium mining in the Territory and the massive environmental, social and financial costs associated with rehabilitating mine sites, such as Rum Jungle and Ranger. We note that in Queensland, site-specific applications are required for all mining activities associated with uranium (i.e., they are never eligible to be governed by standard conditions).⁵¹ Some Australian jurisdictions have even prohibited mining, and in some cases, exploration for radioactive minerals entirely.⁵²

Use of exploration and extraction techniques with high environmental impact

A stipulation that the mining activity not involve blasting in the risk criteria was also removed from the preliminary version of the risk criteria for exploration – in our view this should be included as a risk criteria. The use of blasting as an exploratory technique poses particular environmental harms in the form of dust emissions and fumes (including nearby surface water contamination), noise pollution and ground disturbance – it should be stringently regulated. Where blasting is undertaken in extraction activities, similar stipulations should apply rather than this being regulated through the standard conditions.⁵³

Similarly, other environmentally impactful exploration and extractive mining activities which presently sit in the standard conditions should also be moved to the risk criteria. Without intending to be exhaustive, examples of areas where we think tailored condition licences are appropriate include where mining activity involves:

- 24 hour mining operations;
- a brownfield mine site or a legacy mine site;
- wet processing; or
- dredging.

Recommendations:

12. The risk criteria for both exploration activities and extractive operations should state that the mining operator must not undertake mining activity which involves, targets or otherwise disturbs or is likely to disturb uranium or other naturally occurring radioactive materials.

13. The risk criteria for exploration activities and for extractive activities should state that the mining operator must not undertake blasting.

14. The risk criteria for both exploration activities and extractive operations should specify that the mining activity must not involve 24 hour operations, a brownfield mine site or a legacy mine site, wet processing or dredging.

⁵¹ Department of Environment and Heritage Protection, *Eligibility criteria and standard conditions for exploration and mineral development projects – Version 2* (ESR/2016/1985) (Effective 31 March 2016) 2.

⁵² Parliament of Australia, '[Current prohibitions on nuclear activities in Australia: A quick guide](#)' (30 May 2024).

⁵³ Currently, blasting is referred to in draft extractive condition 20.

Risk criteria based on the location of the activity

Expansion of ecologically significant areas covered by the risk criteria

Conditions 3 and 4 of the draft risk criteria for exploration and extractive operations contain constraints on the areas in mining activity that can occur. The risk criteria should be expanded and strengthened, including to incorporate matters which were in the preliminary risk criteria EDO provided feedback on.

Condition 3 of the draft risk criteria for both exploration activities and extractive operations should be expanded to stipulate that mining activity will not be located in:

- The Alligator Rivers Region as defined in section 3(1) of the *Environment Protection (Alligator Rivers Region) Act 1978* (Cth);
- An area of land declared to be a park or reserve under section 9(4), 12 or 24 of the *Territory Parks and Wildlife Conservation Act 1976* (NT) including an area managed under ss 73 or 74 agreements;
- land held by the Conservation Land Corporation;
- Indigenous protected areas; or
- sites of conservation significance.⁵⁴

This should be in the place of including prohibitions on these activities in the standard conditions, as has been done for some of the above activities,⁵⁵ to ensure that there is an appropriate level of transparency and scrutiny over operations which are proposed for those areas. Further consideration should be given to whether it is appropriate for mining activities to be allowed at all in these ecologically significant areas, subject to consultation with the Land Councils and Traditional Owners in respect of mining on Aboriginal lands. We note that some areas are already declared as general or special reserved blocks under the Mineral Titles Act, precluding some or all mining activity⁵⁶ – it would be prudent to consider whether other areas should also be protected, as the Department has previously done in respect of reserved blocks under the *Petroleum Act 1984* (NT).⁵⁷

There is also a disconformity between draft exploration criteria 4 and the cognate condition 4 for extractive operations. Specifically, the exploration conditions do not include a reference to not undertaking mining activity within a wetland. This should be included given the high ecological and cultural significance of wetlands in the Territory.⁵⁸ This is also noting that not all of the Territory's

⁵⁴ We understand that this list has not been updated since 2009 when the sites were identified and this should be revisited as this is unlikely to represent a complete list of significant conservation sites in the Territory: see Simon Ward and Louise Harrison, [Recognising sites of conservation significance for biodiversity values in the Northern Territory](#) (2009) Department of Natural Resources, Environment, the Arts and Sport.

⁵⁵ Draft exploration condition 5; draft extractive condition 5.

⁵⁶ Mineral Titles Act Pt 6.

⁵⁷ Northern Territory Government, [Petroleum Reserved Blocks](#) (web page).

⁵⁸ Tony McAvoy, [Water - Fluid Perceptions](#) (2006) 1(2) Transforming Cultures eJournal 97, 97-98.

significant wetlands are not currently protected under RAMSAR listings.⁵⁹ In addition, the risk criteria in each instance should stipulate that the mining operator must not undertake any mining activity within 500 metres of any sinkholes or springs,⁶⁰ as was included in a preliminary draft of the conditions.

In addition, risk criteria should be included which provides that the mining activity must not have adverse impacts on sensitive receptors such as:

- matters of National Environmental Significance as articulated in the *Environment Protection and Biodiversity Conservation Act 1999* (Cth);
- listed threatened species under the *Territory Parks and Wildlife Conservation Act 1976* (NT);⁶¹
- Northern Territory fish qualifying for threatened species status;⁶² and/or
- groundwater dependent ecosystems (whether terrestrial, aquatic or subterranean).

At a minimum, if not included in the risk criteria, the matters listed immediately above should be expressly dealt with in the standard conditions, to ensure there are additional environmental conditions associated with protecting MNES, GDEs and threatened species. Again, this also requires attention to then be given to what spatial data is available in relation to where these sensitive receptors are located and what further studies operators must do where there are data gaps.

Recommendations:

15. The risk criteria for both exploration activities and extractive operations should state that mining activity will not be located 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 section 9(4), 12 or 24 of the Territory Parks and Wildlife Conservation Act 1976 (NT) including an area managed under ss 73 or 74 agreements;
- c. land held by the Conservation Land Corporation;
- d. Indigenous protected areas; or
- e. sites of conservation significance.

⁵⁹ The only RAMSAR listed wetlands in the Territory are the Coburg Peninsula and Kakadu National Park: <https://www.ramsar.org/country-profile/australia>. It does not include, for example, the Limmen Bight Region, which has been assessed to meet at least one of the RAMSAR criteria: https://conservationgeography.org/wp-content/uploads/2019/03/FINAL-LIMMEN-BIGHT-MARINE-PARK-REPORT_AD.pdf

⁶⁰ This is presently included in the draft standard conditions for [insert reference], in terms of “*known sinkholes or springs*”. This runs the risk that sinkholes or springs will be damaged where existing data is insufficient – we re-iterate our recommendations, above, about the need for baseline data and limitations to be identified and requirements imposed on operators in relation to desktop studies and fieldwork verification for sensitive receptors. See Recommendations 2-3.

⁶¹ Northern Territory Government, ‘[Threatened animals](#)’ (2024).

⁶² Ibid.

16. The risk criteria for both exploration activities and extractive operations should state that the mining activity will not be located in wetlands, sinkholes and springs.

17. The risk criteria for both exploration activities and extractive operations should state that the mining activity must not have adverse impacts on:

- a. matters of National Environmental Significance as articulated in the *Environment Protection and Biodiversity Conservation Act 1999* (Cth);
- b. listed threatened species under the *Territory Parks and Wildlife Conservation Act 1976* (NT);
- c. Northern Territory fish qualifying for threatened species status; and/or
- d. groundwater dependent ecosystems (whether terrestrial, aquatic or subterranean).

Inclusion of protections for communities

The preliminary draft also included risk criteria based on activities being located close to towns, remote communities, pastoral homesteads, homelands, outstations and other places of habitation. We are concerned that these protections have been removed and recommend that they be put back in. Instead, the standard conditions refer to preventing material impacts on a “nearby community” without any attempt to quantify what is meant by “nearby”.⁶³

There are presently limited protections under the Mineral Titles Act for activities being carried out under mineral titles in close proximity to places of habitation and activities conducted by landowners and occupiers – such as requirements that activities on pastoral land are not carried out within 200 metres of a building that is not enclosed by a fence, or within 50 metres of a fence that encloses a building;⁶⁴ and an obligation on title holders not to interfere with or disturb domestic animals in or adjoining the title area.⁶⁵ These do not displace the need for a high level of scrutiny over mining activities which are proposed near places of human habitation, given the environmental risks posed by such operations. We recommend that the risk criteria exclude activities occurring within a minimum specific kilometre distance of a town, remote community, pastoral homestead, homeland, outstation or other place of habitation, which has a clear scientific rationale and reasoning. A greater buffer may also be required depending on the place where activities are carried out depending on the prevailing metrological and geological conditions – for example, some areas may have stronger winds meaning that dust travels further or is more exposed, so that noise or light might have a greater impact. This should be accounted for in the conditions.

Recommendations:

18. Include risk criteria (as well as standard conditions) which account for the impacts of activities on places of human habitation, including towns, remote communities, pastoral homesteads, homelands and outstations and preclude activities occurring within a certain

⁶³ Draft exploration condition 7, draft extractive condition 6.

⁶⁴ *Mineral Titles Regulations 2011* (NT) cl 24.

⁶⁵ Mineral Titles Act s 92.

minimum buffer zone. This should account for a greater buffer being necessary depending on the prevailing meteorological and geological conditions.

19. Clearly identify the rationale behind the risk criteria (and standard conditions) for activities located adjacent to places of human habitation, and ensure (through inclusion of reasoning) that this reflects best practice, science-based policy.

Feedback on the standard conditions

Feedback on the standard conditions generally

Outcomes based conditions require complementary reporting conditions and data

For outcome-based conditions to succeed, approval holders must be able to demonstrate their progress through the implementation of management activities and through ongoing monitoring. Baseline data and monitoring results should be publicly available and reported regularly to the Minister and the Department.

At present, all the outcomes require is that operators keep records to demonstrate that risk criteria and standard conditions have been met.⁶⁶ This is insufficient. Outcomes-based standard conditions must include corresponding conditions requiring operators to monitor, review and report against the relevant environmental outcomes, at set timeframes, to the Minister and to the Department. Reports must be published and available on the public register along with the Mining Licences. Whilst we welcome the specificity provided about the types of records which must be kept, in the form of a non-exhaustive list, the conditions should require reporting to the regulator at set intervals, including as to whether risk criteria are being met.

We acknowledge that operators are required to submit a completed “exploration compliance report” or “extractive operation report” within 12 months of the anniversary of the licence issue date for each preceding 12-month period, which must be completed in accordance with a set reporting template and guideline and submitted by email to the Department.⁶⁷ This might be a place in which operators report on compliance with conditions and on monitoring results and to allow for environmental auditing by the Department, but it is difficult for us to assess the rigour of this reporting framework without a copy of the relevant reporting templates. These should be made publicly available.

Recommendations:

20. Outcomes-based standard conditions should include corresponding conditions requiring mining operators to monitor, review and report against environmental outcomes, at set timeframes, to both the Minister and the Department.

⁶⁶ Draft exploration condition 24; draft extractive condition 24.

⁶⁷ Draft exploration condition 23, read with the definition of “exploration compliance report” (p 6); draft extractive condition 23, read with the definition of “extractive operation compliance report” (p 6).

21. Exploration and extractive operation report templates should be publicly released.

Conditions should avoid vague, or imprecise language or import subject standards which create regulatory uncertainty

The licensing scheme will not effectively protect the environment and communities if there is regulatory uncertainty around what an operator is required to do to meet the conditions of a licence. Conditions which are vaguely expressed or capable of multiple interpretations as to whether the steps operators have taken are sufficient will not be able to be enforced, rendering the civil and criminal penalty scheme in the EP Act ineffectual. They are also liable to be interpreted in a manner which is the least costly or burdensome to operators, both in performing the conditions, and in self-assessing their activities as falling within a lower licensing tier.

Several of the conditions in both the exploration and extractive conditions fall foul of this regulatory uncertainty in a manner which is likely to result in environmental harm. Examples include (our emphasis):

“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”⁶⁸

“The mining operator must restore drill holes to controlling geological conditions that existed before the drill hole was drilled as soon as reasonably practicable”⁶⁹

“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...”⁷⁰

This language leaves considerable discretion to operators to determine how these conditions should be met. This is exacerbated by the lack of technical guidance or measurement criteria incorporated into the standard conditions. These conditions should be re-drafted. We include further recommendations in relation to these conditions in the latter part of the submission which considers conditions by topic area.

Several of the draft conditions also include qualifications that operators are not to undertake mining activities which cause or are likely to cause a “*material impact*” or cause or are likely to cause “*material environmental harm*”. The term “*material impact*” is not defined in the EP Act, although the terms “*impact*” and “*significant impact*” are defined,⁷¹ and in a way which confirms that an impact may be direct or indirect. In the latter case, “*material environmental harm*” is a statutory

⁶⁸ Draft exploration condition 10; draft extractive condition 9.

⁶⁹ Draft exploration condition 19(b).

⁷⁰ Draft exploration condition 20(b); draft extractive condition 21(b).

⁷¹ EP Act, ss 10, 11.

term defined in s 8 of the EP Act to mean environmental harm that “(a) is not trivial or negligible in nature; and (b) is less serious than significant environmental harm”.⁷²

Importing these materiality requirements similarly introduces scope for operator discretion as to whether impacts are material or harms are something other than ‘trivial’ or ‘negligible’ – this should be avoided. As we note above, this is likely to be interpreted in a manner least burdensome to operators, rather than being commensurate with environmental risk. Some of the qualified activities are also activities which will inherently result in environmental harm by their nature – for example, activities involving uranium and other naturally occurring radioactive materials, blasting, dredging, sand and gravel extraction from waterways and the clearing of mature trees.⁷³ Those activities should necessitate a greater degree of scrutiny.

Clear and objective conditions will result in appropriate scrutiny being provided over mining operations and ensure that potentially risky activities are assessed under the requirements for modified condition licences, mandating an environmental risk assessment and public consultation in recognition of those risks.

Recommendations:

22. Standard conditions must be clear, objective and capable of enforcement. Conditions should be revised to avoid the use of vague or imprecise language or conditions which are capable of multiple interpretations as to whether the operator has been compliant.
23. Qualifications on the basis of materiality should be removed, particularly for those activities which will inherently result in environmental harm.

Feedback on standard conditions by topic area

General conditions

Several of our recommendations above in relation to the risk criteria have flow on effects to the content of the present standard conditions for exploration and for extractive operations. In particular:

- we reiterate that a condition requiring activity to be carried out in accordance with “good industry practice” is an insufficient guarantee of appropriate environmental outcomes;
- activities which involve brownfield mine sites or legacy mine sites, 24 hour mining operations, uranium or naturally occurring radioactive materials, wet processing or dredging should be governed by tailored condition licences; and
- the places identified in Condition 5 of each set of conditions should be identified in the risk criteria, not the standard conditions.

⁷² Significant environmental harm is defined in s 9 of the EP Act.

⁷³ See, for example, draft exploration conditions 4(b), 4(c), 11.

In addition, if the risk criteria are strengthened in relation to cumulative impact in the manner suggested above at Recommendation 7, then the general conditions relating to impact⁷⁴ should also be revisited and revised in a commensurate manner, so that only those operations with minimal disturbance are dealt with under standard condition licences.

It is unclear whether Condition 3(c) of the draft standard conditions for extractive operations is intending to authorise the carrying out of bore work below the extraction thresholds identified,⁷⁵ where that work would otherwise require authorisation under the Water Act.⁷⁶ The conditions should not allow for less scrutiny over drilling and bore work.

Each set of draft standard conditions contains a requirement that a mining operator must not undertake a mining activity which causes, or would likely cause, a material impact on a nearby community. As noted above, it is unclear what is meant by “nearby”, and the term “material impact” is also not defined and will likely be interpreted in favour of the operator. This condition requires far greater prescription. We re-iterate our earlier Recommendations 18-19.

Recommendations:

24. If the risk criteria are strengthened in relation to cumulative impact as per Recommendation 7, then draft exploration condition 3 and draft extractive condition 3 should be revised in a commensurate way so only those operations with minimal disturbance are governed by standard condition licences.
25. Bore work should not be subject to less scrutiny under the draft extractive conditions as is presently required under the Water Act.

Flora and fauna

Similarly, several of our above recommendations have flow on effects for the content of the present standard conditions in this category – for example:

- Sites of conservation significance should be included in the risk criteria.
- The standard conditions should include a buffer around the sites of conservation significance, and there should be no additional qualification that requires a material impact on the identified ecological values for those sites. Similar site buffers should be included for other locations identified in Recommendation 17.
- There should be stipulated measurement criteria and datasets relating to the values identified in Condition 8 (extractive operations) and Condition 9 (exploration activities).
- Condition 9 of the exploration activities should include a reference to wetlands.

⁷⁴ Draft exploration condition 3, draft extractive condition 3.

⁷⁵ See EP Act s 124Z(e).

⁷⁶ Water Act ss 4(1) (definition of ‘bore work’), 49, 57.

We are particularly concerned by the way in which the licensing framework purports to authorise and regulate land clearing. Specifically, the draft standard conditions for both exploration and extractive operations include the following condition:⁷⁷

“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”.

There are also conditions precluding mining activities which cause 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”.⁷⁸

This condition paves the way for significant land clearing to occur without any checks and balances, given the absence of any requirement to assess the environmental risks or impacts of the proposed activity, the use of subjective standards for extent and disturbance, and, where the operator self-assesses that these and other standard conditions can be met, the issuance of a licence which lacks any kind of public scrutiny. The Territory presently has the highest percentage of intact forests and woodlands out of any jurisdiction in Australia,⁷⁹ but lacks specific and comprehensive laws to regulate land clearing and ensure biodiversity conservation. In the absence of these frameworks, the Mining Licence framework should not be used to authorise further land clearing by stealth and without any kind of environmental assessment.

We recommend that there be clear, objective thresholds for the clearing of vegetation which minimise environmental harm and require a greater degree of scrutiny. Native vegetation clearing in particular should not be authorised under the standard conditions. There should also be an unqualified prohibition on clearing mature trees and trees with hollows suitable for fauna habitat. We also recommend the inclusion of a standard condition prohibiting the creation of fauna traps.

Recommendation:

26. The standard conditions should include a buffer zone around sites of conservation significance and there should also be site buffers for other locations identified in Recommendation 17.
27. The conditions should not authorise land clearing in reliance on operator-assessed, subjective standards for what extent and disturbance of clearing is appropriate. There must be clear, objective thresholds in the standard conditions, and native vegetation clearing must not be authorised under a standard condition licence.
28. There should be an unqualified prohibition in the standard conditions for clearing mature trees and trees with hollows suitable for fauna habitat.

⁷⁷ Draft exploration condition 10, draft extractive condition 9.

⁷⁸ Draft exploration condition 11, draft extractive condition 10.

⁷⁹ Keogh, V., Ward, M., Stewart, R., Blanch, S., and Cronin, T, “[WWF Trees Scorecard 2023 Technical Report](#)” (2023) 7.

29. There should be an additional standard condition prohibiting the creation of fauna traps.

Soils and surface water, groundwater, and air quality

We re-iterate our recommendations above which are broadly applicable conditions in these categories, including on the removal of material environmental harm qualifications, the importance of stipulating technical standards and guidance and the need for appropriate planning and reporting.

By way of example, given the significant environmental risks of acid and metalliferous drainage (**AMD**), any mining activity which may result in the generation of AMD should not be governed by a standard condition licence. In addition, operations which have the potential for AMD should be required to have an AMD Management Plan, which is independently reviewed and approved by the Minister, before they can carry out mining operations. The conditions should be strengthened accordingly.

We also consider that sand or gravel extraction from a waterway should be precluded under the standard conditions. Those types of activities should be regulated under a tailored condition licence.

The standard condition licences also give insufficient attention to regulating the air quality and dust emissions associated with mining activities, be they exploratory or extractive. They are dealt with in draft extractive condition 20, and not at all under the exploratory conditions. There must be far greater rigour introduced in the conditions including reference to technical standards and guidance. Consistent with our above recommendations, conditions should not be qualified by adverse impact thresholds.

Recommendations:

30. Conditions relating to soils and surface water, groundwater and air quality should be strengthened, including to require management plans for environmentally risky areas.
31. Sand or gravel extraction from a waterway should not be permitted under the standard conditions.
32. The standard conditions require far greater prescription in relation to air quality and dust emissions.

Rehabilitation

Best practice mining regulation requires closure and rehabilitation planning to commence, and closure objectives and land end uses to be determined, as early as possible in a mining project, including in the exploration stages, and for extractive mining operations. Clear rehabilitation requirements and criteria are necessary to guard against not only poor environmental outcomes

in an individual case, but the cumulative environmental impacts of mining exploration across the Territory. This is even more important given the ongoing push to expand exploration activities in the Territory, and particularly for critical minerals. Good environmental management practices and assurance frameworks must also be carried through, strengthened, and updated where exploration activities convert into active mining.

Accordingly, conditions should require greater prescription in relation to rehabilitation. In this respect, we note the far more extensive set of rehabilitation conditions in Queensland pertaining to exploration, for example,⁸⁰ as well as detailed codes of practice and guidelines which exist in relation to rehabilitation. In NSW, for example, it is a standard condition for exploration activities that operators comply with the NSW Resources Regulator Exploration Code of Practice.⁸¹ That Code also contains detailed information about the kinds of records which operators should keep in relation to rehabilitation.

Presently, a rehabilitation plan must be submitted as part of an application for a tailored condition licence for exploration activities.⁸² However, as we have submitted previously, we would expect that such a plan should be developed and maintained for all exploration activities. This is particularly the case noting that, by definition, any exploration activity for which a licence is required is one which will result in substantial disturbance to the land. Similarly, a closure plan including costings of closure activities should be necessary for all extractive operations, and not simply where operators apply for a tailored condition licence. The EP Act provides ample scope for standard conditions to be included in Mining Licences which deal with mine closure and rehabilitation planning, post-closure monitoring, management and reporting.

The new scheme includes provisions for operators to apply to the Minister for the cancellation of a Mining Licence, a process which is partially referable to the Minister's satisfaction that remediation and rehabilitation actions have been undertaken as required.⁸³ There is also a process by which the Minister can issue a mining closure certificate if closure and rehabilitation requirements, including post-closure monitoring, management and reporting requirements under a Mining Licence have been met.⁸⁴ There should be clear rehabilitation conditions and competition criteria required under the standard conditions, which enable the Minister to make informed decisions around licence and site relinquishment and minimise the potential for toxic legacies to be left behind.⁸⁵

More specifically, the conditions should require that mining operators:

⁸⁰ Department of Environment and Heritage Protection, [Eligibility criteria and standard conditions for exploration and mineral development projects – Version 2](#) (ESR/2016/1985) (Effective 31 March 2016) Conditions B24-B31 (p 14-15).

⁸¹ NSW Resources Regulator, [Exploration Code of Practice: Rehabilitation Version 5.0](#) (March 2022). There are several other mandatory codes for mineral exploration in NSW.

⁸² EP Act ss 124A-124E.

⁸³ EP Act ss 124ZZH-ZZM.

⁸⁴ The closure certificate process also allows, but does not require, the Minister to declare by *Gazette* notice the criteria to be met by a mining operator before a mining closure certificate can be issued. It is not entirely clear how this process and Mining Licence cancellation process are intended to interact.

⁸⁵ See also Mineral Titles Act s 103(4)(b).

- develop and submit a rehabilitation plan upon commencement of the exploration activity OR an plan and costings of closure activities for an extractive operation, for approval by the Minister or their delegate, which:
 - includes clear, specific, achievable and measurable rehabilitation objectives and competition criteria;
 - includes relevant baseline data and clear identification of ‘pre-disturbance conditions;
 - provides for effective rehabilitation of disturbed areas;
 - provides for post-rehabilitation monitoring; and
 - is to be reviewed, updated and re-submitted to the Minister whenever material changes have been made;
- implement and complete a rehabilitation and monitoring program; and,
- submit of a final rehabilitation report and compliance statement showing how rehabilitation objectives have been met.

This gives an appropriate level of scrutiny and detail against which rehabilitation outcomes can be assessed, including by to determine whether the operator has met requirements which are already set out in the current draft standard conditions for rehabilitation. It is difficult to see how these criteria can be assessed in the absence, amongst other things, of baseline data and assessment of the pre-disturbance conditions. We are also unsure why the level of detail set out in Condition 22 of the draft extractive standard conditions has not been included in the exploration conditions, particularly in circumstances where the exploration does not result in a commercially viable resource being obtained (such that the land is not further developed for mining). Moreover, if an operation results in permanent surface water features, then this should mean that it requires a higher degree of conditioning than under a standard condition licence.

The draft standard conditions for both exploration and extractive operations recognise that progressive rehabilitation should occur “*as soon as reasonably practicable*” and where no further mining activity is occurring, that this must commence no later than 12 months following the completion of the relevant mining activity. We agree that progressive rehabilitation requirements must be built into the standard conditions. However, as previously recommended, the conditions should require progressive rehabilitation to occur prior to the start of any wet season, where disturbances are occurring within river catchment areas, to guard against the risk of mine wastes (including potentially acid forming waste) entering our river systems. There should also be timeframes by which rehabilitation must be completed – ideally in conformity with a rehabilitation and closure plan which is approved and regularly updated.

We are also concerned by the latitude granted to operators in the qualification to this condition, which provides that where the area is intended to be used for further mining activity, the operator is to maintain the area in a manner to cause “*as little environmental impact as is reasonable in the circumstances*”, and must rehabilitate the area “*as soon as reasonably practicable*” once further mining activity is completed.

The Territory has a long history of abandoned and legacy mines with significant and unremedied environmental impacts, including where mines go into care and maintenance and are eventually

abandoned. Stringent timeframes around progressive rehabilitation reduce the risk of toxic legacies being left behind with ongoing community and environmental impacts. The standard conditions should provide that if an area is not used for further mining activity within a certain timeframe, it must be rehabilitated. Moreover, there should be strong environmental controls implemented on such land – a requirement to have as little environmental impact “*as is reasonable in the circumstances*” is wholly inadequate and gives far too much discretion to operators. Having a stringently designed and approved mining plans is vital.

Related to rehabilitation is the need to have adequate security bonds across all mining operations – a manner we heavily emphasised in our submission on the Exposure Draft. The new scheme as enacted requires the Minister to determine and publish the methodology for calculating the amount or value of the mining security to be provided.⁸⁶ It further provides that in determining the methodology, environmental security bonds should be calculated by, amongst other things, reference to the environmental impacts and risks carried out under the Mining Licence, the level of uncertainty in assessing risks and impacts and management issues to deal with them and the level of environmental disturbance that has been caused, is caused or is likely to be caused by the relevant activity.⁸⁷

EDO maintains that security bonds should be calculated based on detailed, regularly revised closure and rehabilitation plans, and be adequate to cover the full rehabilitation costs for all disturbances, including post-closure monitoring, maintenance and reporting costs. Whilst these costs and disturbances will undoubtedly be lower in the exploration phases of an activity, adequate bonds are still vital. The documentation we outline above for inclusion in the standard conditions will also provide necessary details to enable appropriate and rigorous calculation of security bonds.

The standard conditions should ensure that security bonds, which are mandatory under all licence tiers, be calculated based on the life of an exploration or extractive operation, and regularly revised and updated whilst activities under the licence are being carried out. Ideally, consultation should happen on the methodology for calculating security bonds prior to the standard conditions being implemented, and the conditions should require documentation to be retained and submitted to enable the appropriate assessment of security bond amounts, including through a rehabilitation plan.

Recommendations:

33. Far greater prescription is required in the conditions with respect to closure and rehabilitation (across all tiers of licence). The conditions should require that mining operators:

⁸⁶ EP Act s 132C(1).

⁸⁷ EP Act s 132C(2).

- a. develop and submit a rehabilitation plan upon commencement of the exploration activity OR a plan and costings of closure activities for an extractive operation, for approval by the Minister or their delegate, which:
 - i. includes clear, specific, achievable and measurable rehabilitation objectives and competition criteria;
 - ii. includes relevant baseline data and clear identification of ‘pre-disturbance conditions’;
 - iii. provides for effective rehabilitation of disturbed areas;
 - iv. provides for post-rehabilitation monitoring; and
 - v. is to be reviewed, updated and re-submitted to the Minister whenever material changes have been made;
- b. implement and complete a rehabilitation and monitoring program; and,
- c. submit of a final rehabilitation report and compliance statement showing how rehabilitation objectives have been met.

34. The conditions should require progressive rehabilitation of mining activities within catchment areas to occur prior to the start of the upcoming wet season.

35. There should be stringent timeframes and environmental controls around progressive rehabilitation, rather than relying on operator discretion.

36. There should be stringent timeframes and environmental controls around progressive rehabilitation. Conditions which allow operators to maintain areas intended for further mining activity so as to cause “*as little environmental impact as is reasonable in the circumstances*”, and to rehabilitate the area “*as soon as reasonably practicable*” are inadequate and leave too much to operator discretion.

37. The standard conditions should ensure that security bonds, which are mandatory under all licence tiers, be calculated based on the life of an exploration or extractive operation, and regularly revised and updated whilst activities under the licence are being carried out.

Feedback on additional topics for inclusion in the standard conditions

There are several further topics which we think should be covered by the standard conditions, which are not referred to here. Even where certain issues are covered by other Northern Territory legislation, there should still be obligations incorporated within the conditions of Mining Licences, and at a minimum, cross-references to legislative obligations and guidance within the materials

Details missing from the new framework as compared with the MM Act

As noted above, under the now repealed MM Act and under the new scheme, operators are required to establish and maintain an appropriate environmental protection management system for the activity site.⁸⁸ Details of that management system were a mandatory inclusion in Mining Management Plans (**MMPs**) submitted under the MM Act.⁸⁹ The standard conditions should also require that operators provide the Minister and the regulator with details of the environmental protection management system for the site, which is then published on the public register. Other information which was required in MMPs, such as a description of the mining activities and the organisational structure for carrying out the mining activities, should also be submitted under the standard conditions, and updated on a regular basis.⁹⁰ This is particularly relevant noting that under the Mineral Titles Act, an operator is only required to submit a Technical Work Program for the first two years of an up to six-year mineral exploration licence,⁹¹ whilst applications for Extractive Mineral Permits and Leases simply require a summary of work to be submitted.⁹²

Noise impacts

The draft standard conditions do not squarely or appropriately deal with the regulation of noise impacts arising from mining operations, other than a reference to blasting in the draft conditions under “air quality”. This should be rectified, including by reference to technical standards and guidelines relating to noise management and/or target decibel levels.

Weeds, feral animal and fire management

The draft standard conditions do not include conditions relating to pest and weed management on site and requiring operators to ensure that no new declared weeds or feral animals are introduced and spread is not increased because of mining activities. Nor do the standard conditions include any obligations relating to fire management. These should be included as a matter of best practice, as well as any other legislative obligations referred to and cross-referenced (for example, any requirements under the *Weeds Management Act 2001* (NT)).

There are also no conditions dealing with fire management on mine sites. These must be included within the standard conditions.

⁸⁸ EP Act s 124ZZZ1.

⁸⁹ MM Act s 40(2)(e).

⁹⁰ For further detail, see Environmental Defenders Office, [Submission on the Exposure Draft for the Environment Protection Legislation Amendment \(Mining\) Bill](#) (18 September 2023) 13-15, which recommends that key details of the mining of activities which the operator must provide under the MM Act for approval in an MMP must be reflected in the approval processes under the Mineral Titles Act and/or the new environmental licensing system.

⁹¹ Mineral Titles Act s 27(2)(b) and see definition of ‘technical work program’ in s 13 and optional additional inclusions in the *Mineral Titles Regulations 2011* (NT) s 4A. An Extractive Mineral Exploration Licence is non-renewable and is only granted for a term of 2 years – it must be accompanied by a “summary for the work proposed to be carried out” for conducting the authorised activities and an estimate of proposed expenditure: Mineral Titles Act s 47.

⁹² Mineral Titles Act ss 51, 55.

Cultural heritage and sacred sites

In our submission on the Exposure Draft, we emphasised that the protection of sacred sites and Aboriginal cultural heritage be at the forefront of any assessments and approvals for mining activity. We recommended that:⁹³

- investigation, mapping and approvals pertaining to the protection of sacred sites under the Sacred Sites Act should occur as a pre-condition to granting any mineral title, and prior to the granting of any Mining Licence or Environmental Approval; and
- comprehensive cultural heritage assessments, in consultation with Traditional Owners, and the preparation of a cultural heritage management plan should be required prior to granting any mineral title and prior to the granting of any Mining Licence or Environmental Approval.

Whilst it is disappointing that these recommendations were not taken up in the overall scheme, we think that at a minimum therefore, these requirements should be included in the conditioning for all tiers of Mining Licence, including under the standard conditions.

Care and maintenance mining

In our submission on the Exposure Draft, we provided several recommendations around how the scheme could be strengthened to account for the impacts of care and maintenance mining operations.⁹⁴ Whilst not all of these issues can be remedied through the standard condition framework, there should be conditions, particularly for extractive operations, which deal with this area. In particular, the standard conditions, particularly for extractive operations, should require operators:

- to have a plan for care and maintenance, which is updated regularly and specifically updated and approved by the Minister if a mine goes into care and maintenance;
- to notify the Territory government and the public if a mine or any key part of a mine is entering into care and maintenance;
- to manage a mine site in care and maintenance in a way that minimises environmental impacts; and
- who remain in care and maintenance beyond a set period of time to take steps to fully close and rehabilitate the site (or otherwise transfer the site to an operator who has been assessed to have appropriate financial and technical capacity to continue operations or meet rehabilitation requirements).

Climate change

At a time of runaway climate change, these conditions miss a crucial opportunity to ensure that mining projects, including worker sites and accommodation, are not powered by fossil fuels. It should be a standard condition in every Mining Licence that operations do not source their electricity needs from fossil fuels.

⁹³ Exposure Draft Submission, 23-24.

⁹⁴ Exposure Draft Submission 24-28.

Recommendations:

38. The standard conditions should require that operators provide the Minister and the regulator with details of the environmental protection management system for the site, which is then published on the public register. Other information which was required in Mining Management Plans under the *Mining Management Act 2001* (NT) (**MM Act**), such as a description of the mining activities and the organisational structure for carrying out the mining activities, should also be submitted under the standard conditions, and updated on a regular basis.
39. The standard conditions should include prescriptive conditions with respect to noise impacts, weeds, feral animals and fire management.
40. Whilst these should be done as a pre-condition to the granting of a Mining Licence or Environmental Approval, at a minimum, the standard conditions should require:
 - a. Investigation, mapping and approvals pertaining to the protection of sacred sites; and
 - b. Comprehensive cultural heritage assessments in consultation with Traditional Owners and the preparation of cultural heritage management plans.
41. The standard conditions, particularly for extractive operations, should require:
 - a. operators to have a plan for care and maintenance, which is updated regularly and specifically updated and approved by the Minister if a mine goes into care and maintenance;
 - b. Require operators to notify the Territory government and the public if a mine or any key part of a mine is entering into care and maintenance;
 - c. operators to manage a mine site in care and maintenance in a way that minimises environmental impacts; and
 - d. operators who remain in care and maintenance beyond a set period of time to take steps to fully close and rehabilitate the site (or otherwise transfer the site to an operator who has been assessed to have appropriate financial and technical capacity to continue operations or meet rehabilitation requirements.
42. The standard conditions should require that mining activities do not source their electricity needs from fossil fuels.

*Thank you for the opportunity to make this submission.
Please do not hesitate to contact our office should you have further enquiries.*