

2. LEGISLATIVE FRAMEWORK

2.1 Australian Government Legislation

2.1.1 Environment Protection and Biodiversity Conservation Act

Under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), actions that are likely to have a significant impact on a matter of national environmental significance are assessed. The Australian Government Department of the Environment, Water, Heritage and the Arts (DEWHA) is responsible for administering the act. Matters considered to be of national environmental significance include World Heritage properties, National Heritage places, threatened species and ecological communities and migratory species.

A referral and assessment process determines the application of the EPBC Act. The first step in this process is referral of the project to DEWHA. The project is then assessed for the potential for impacts upon matters of national environmental significance, and if this is likely, to establish the significance of these impacts. If it is determined that there will be, or there is likely to be, a significant impact to a matter of national environmental significance the project is declared to be a controlled action and will require formal assessment under the EPBC Act.

An EPBC Act referral for the project was submitted to DEWHA on 22 April 2009. The project was declared not a controlled action on 21 May 2009 (Appendix 3) and therefore environmental approval of the project will proceed solely under the Northern Territory legislative process.

Since the submission and assessment of the original referral, the location of the groundwater borefield for the project's water supply has changed. A second EPBC Act referral solely addressing the development of the borefield will be submitted to DEWHA in parallel with this EIS. A determination on this referral is expected by late December 2009. Based on the information available on the new borefield location, it is considered unlikely that the development of the borefield will be considered a controlled action.

2.1.2 Native Title Act and Aboriginal Land Rights (Northern Territory) Act

The *Native Title Act 1993* provides legal recognition of the rights and interests of the Aboriginal people over land and water possessed under their traditional laws and customs. The act sets out basic principals regarding native title in Australia and establishes a regulating and governing body, the National Native Title Tribunal. The act also identifies land over which native title has been either partially or completely extinguished. This includes land to which (prior to 23 December 1996) the Commonwealth has granted or vested title such as freehold title or leases that give exclusive possession.

The *Aboriginal Land Rights (Northern Territory) Act 1976* provides for the granting of a fee simple estate for certain lands (as per Schedule 1 of the Act) to Aboriginal Land Trusts and for the claiming of unalienated Crown Land by those groups of Aboriginal people who can prove that they were the traditional owners of such land (ATNS, 2005).

As the underlying land tenure of the project is enhanced freehold, the provisions of the Native Title Act and Aboriginal Land Rights (Northern Territory) Act do not apply. However, in recognition that the owners of the underlying land tenure of the Mineral Lease are the Arruwurra Aboriginal Corporation, the Central Land Council (CLC) (on behalf of the Traditional Owners) and Minemakers are working together to address the concerns of the Traditional Owners.

Role of the Land Councils under this Legislation

Traditional Owners in the project area are represented by the CLC and Northern Land Council (NLC) (the border of their respective jurisdictions is the Barkly highway), as the majority of the project lies within the CLC's jurisdiction the NLC has agreed for the CLC to coordinate the representation for the project. The CLC and NLC are two of four land councils in the Northern Territory that act as representative bodies with Commonwealth statutory authority under the Commonwealth Aboriginal Land Rights (Northern Territory) Act. They also have responsibilities under the Native Title Act and the Northern Territory's *Pastoral Land Act*.

In accordance with the Act, the functions of the land councils are to:

- Ascertain and express the wishes and opinions of Aboriginals living in the area concerning the management of Aboriginal land in that area.
- Protect the interests of traditional Aboriginal owners of land in that area.
- Consult with traditional Aboriginal owners of land in that area concerning proposed uses of the land.

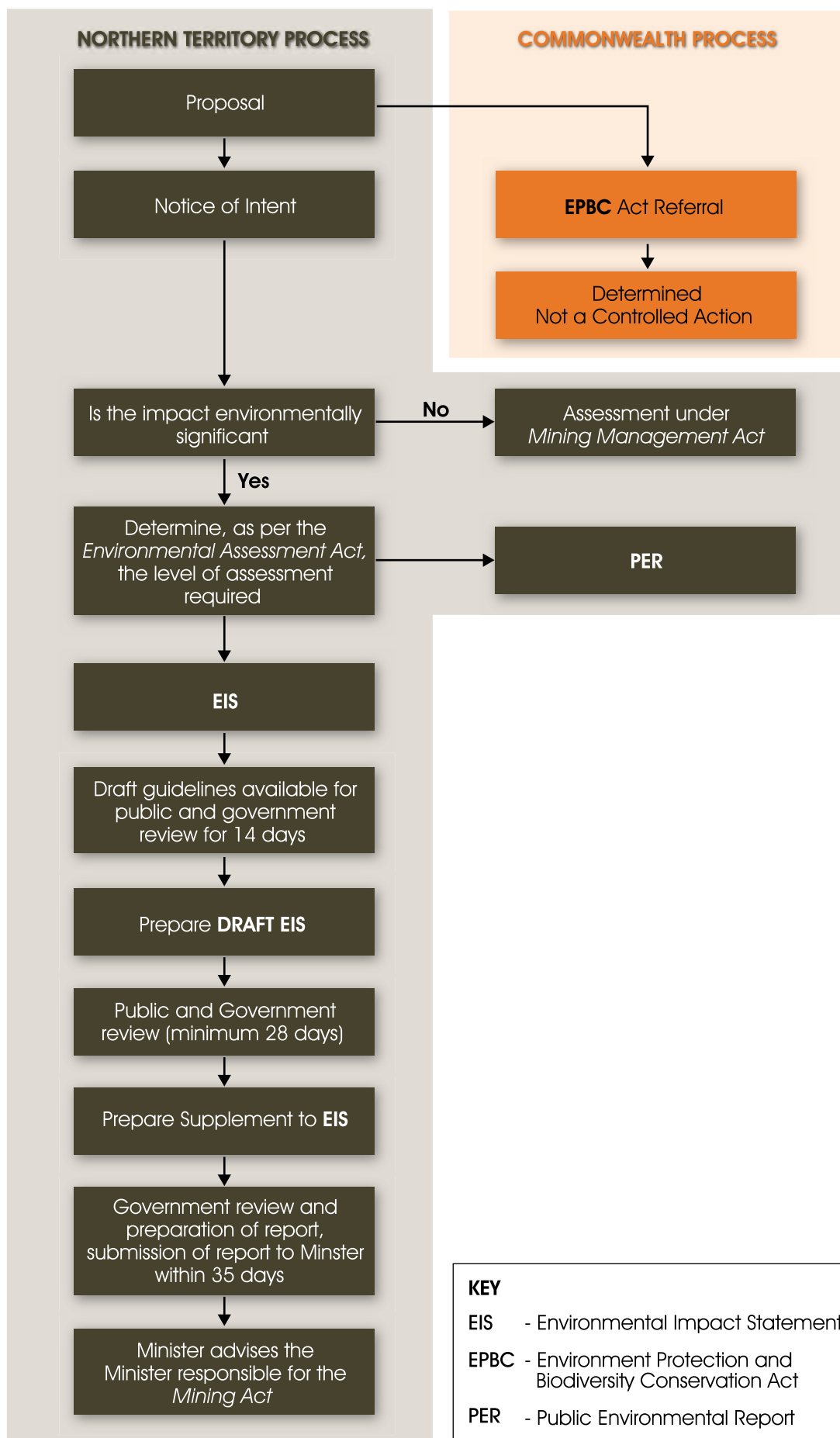
2.2 Northern Territory Legislation

The initial environmental permitting of new mining activities in the Northern Territory is regulated under either the *Mining Management Act* or the *Environmental Assessment Act* (see Figure 2.1). A decision on the appropriate permitting route is initiated by the proponent's submission of a Notice of Intent (NOI) to the Northern Territory Government through the Minerals and Energy Referral Assessment branch of the Department of Regional Development, Primary Industry, Fisheries and Resources (DRDPIFR). The NOI is evaluated to determine whether the proposed project should be:

- Referred to the Minister for Natural Resources, Environment and Heritage under the Environmental Assessment Act; or
- Managed by DRDPIFR under the Mining Management Act.

A NOI for the Wonarah Phosphate Project was lodged with DRDPIFR on 10 March 2009 and the project was then referred to the Northern Territory Minister for Natural Resources, Environment and Heritage for consideration. The Minister determined that the project required the preparation of an Environmental Impact Statement (EIS) under the Environment Assessment Act on 5 May 2009 (Appendix 2).

Draft guidelines for the preparation of the EIS were issued on 17 June 2009, and following a two-week period of public comment and a two-week period for the Department of Natural Resources, Environment, the Arts and Sport (DNRETAS) to consider the comments received, the final guidelines were issued on 11 July 2009 (Appendix 1). This document addresses these



guidelines and provides the basis upon which assessment and approval by the Northern Territory Government will be made.

Following completion of the assessment and approval process under the Environmental Assessment Act by the Minister for Natural Resources, Environment and Heritage (assisted by the DNRETAS Environment, Heritage and the Arts Division (EHA)), DRDPFR will proceed with the approval process under the *Mining Act* and Mining Management Act.

Discussion of these and other relevant pieces of Northern Territory legislation is provided below.

2.2.1 Mining Act and Mining Management Act

The principal legislation for the regulation of mining proposals in the Northern Territory are the Mining Act and the Mining Management Act, both of which are administered by the DRDPFR.

Mining Act

The Mining Act establishes the framework within which activities to explore for and mine mineral resources can occur. The act sets out the administrative processes for authorising these activities through the grant of a title.

Prior to any activities taking place on a granted Mineral Lease, an authorisation to carry out mining activities under the Mining Management Act must be obtained.

Mining Management Act

The objectives of the Mining Management Act are to provide for the authorisation of mining activities, the management of mining sites and the protection of the environment on mining sites.

Under the Mining Management Act, an application for an authorisation to carry out mining activities must be accompanied by a mining management plan (MMP). An MMP includes information relating to the description of mining activities, the management system to be implemented for the management of environmental issues, costing of closure activities and particulars of organisational structure. Plans of any existing or proposed mine workings and infrastructure must also be included. The MMP is required to be reviewed at intervals specified in the authorisation to carry out mining activities.

Under Section 43 of the Mining Management Act a security may be required by the Minister for the purpose of securing costs and expenses in relation to the Minister causing an action to be taken to prevent, minimise or rectify environmental harm. Mine operators are expected to calculate rehabilitation costs and present these as part of the MMP. These costs are verified by DRDPFR and are reassessed when revised MMPs are submitted.

2.2.2 Environmental Assessment Act

The Environmental Assessment Act and the Environmental Assessment Administrative Procedures establish the framework for the assessment of potential or anticipated environmental impacts of development, and provide for protection of the environment. The Northern Territory Minister for Natural Resources, Environment and Heritage is responsible for administering the act. The Minister also determines the appropriate level of assessment for new developments or

material changes to existing operations, based on the sensitivity of the local environment, the scale of the proposal and its potential impact upon the environment.

2.2.3 Water Act

The *Water Act* provides for the investigation, allocation, use, control, protection and management of surface water and groundwater resources, as well as the administrative process for licensing these activities. The act also considers the protection and use of water resources for purposes such as recreational, social and cultural uses.

Under this act, mining activities (as defined by the Mining Management Act) or another activity for a purpose ancillary to that mining activity, including the use of water as drinking water, are exempt from a number of provisions in the Water Act. This includes, but is not limited to, the use of surface water and groundwater as well as the construction of works to allow for the use of water.

While this project will not require discharge of waste off the Mineral Lease, if off-lease discharge was anticipated a waste discharge licence would be required for this activity. Waste is defined in the Water Act as any solids, liquids or gas, which, if added to the water, may pollute the water.

2.2.4 Northern Territory Aboriginal Sacred Sites Act

This act establishes a procedure for the protection and registration of sacred sites, providing for entry onto sacred sites and the conditions to which such entry is subject and establishing a procedure for the avoidance of sacred sites in the development and use of land. Under the act an Authority Certificate can be issued that provides legal indemnity against possible prosecution in relation to damage to sacred sites resulting from the works or uses covered by the certificate as long as any conditions imposed are followed. The Aboriginal Areas Protection Authority (AAPA) administers the issue of Authority Certificates in consultation with the relevant custodians under the act. An application for an Authority Certificate for the project area has been submitted.

2.2.5 Other Relevant Legislation

Other Northern Territory legislation relevant to the project includes the following acts and their associated amendments and regulations:

- *Aboriginal Land Act* – provides for access to Aboriginal land and certain roads bordered by Aboriginal land. Transport routes during construction and operation may traverse areas subject to this act. If required, permits will be obtained for access to these areas.
- *Bushfires Act* – relates to the prevention and suppression of bushfires and outlines when permits are required for controlled burns.
- *Control of Roads Act* – provides process by which roads can be opened and closed. Any public or gazetted roads that are required to be opened or closed as a result of construction or operation of the mine will follow the provisions of the act. Roads established within the mining lease will not be public roads and will therefore not require approval under this act.
- *Dangerous Goods Act* – this act provides for the safe storage, handling and transport of dangerous goods. Minemakers will obtain licences for storage or transportation of dangerous goods defined under the act.

- *Dangerous Goods (Road and Rail Transport) Act* – this act makes provision for safety in the transport of dangerous goods by road and rail. Involvement in the transport of dangerous goods by road or rail includes, but is not limited to, being the consignee of dangerous goods, loading or unloading dangerous goods that have been transported or the importation or arrangement to import dangerous goods into Australia.
- *Environmental Offences and Penalties Act* – this act establishes the penalties for certain offences related to the protection of the environment.
- *Heritage Conservation Act* – provides for the protection of archaeological places and objects. If any archaeological places or objects are to be disturbed through mining, permission will be required to be sought from the Minister for Natural Resources, Environment and Heritage to remove, disturb and/or destroy the objects or sites.
- *Miscellaneous Acts Amendment (Aboriginal Community Living Areas) Act* – this act amends certain acts to make provision for the excision of certain areas of land from pastoral leases and for these areas to be granted an estate in fee simple as living areas for the benefit of Aboriginals. The project is located within Northern Territory enhanced freehold parcels issued in accordance with this act.
- *Planning Act* – this act provides for appropriate and orderly planning and control of the use and development of land. The Planning Act will be applicable to infrastructure constructed at Tennant Creek and East Arm Port and as such will be permitted separately to this EIS.
- *Soil Conservation and Land Utilisation Act* – this act makes provision for the prevention of soil erosion and for the conservation and reclamation of soil. Under this act, Minemakers are considered to be landholders and as such can be in breach of the Act if appropriate soil erosion and conservation measures are not adopted and maintained during the life of the project.
- *Territory Parks and Wildlife Conservation Act* – this act lists those species of plants and animals that are protected within the Northern Territory. Permits issued under this Act will be required to take or interfere with protected plants or animals.
- *Traffic Act* – regulates traffic and includes provisions in relation to the erection and operation of traffic control devices. Consent will be required prior to the erection and operation of traffic control devices.
- *Waste Management and Pollution Control Act* – provides for the protection of the environment through encouragement of effective waste management and pollution prevention and control practices. Environment protection approval is required if an activity specified under Schedule 2 of the Act, such as disposing of waste by burial, is to be carried out.
- *Weeds Management Act* – this act aims to protect the Northern Territory from the adverse impacts of weeds and identifies the responsibilities of all landholders in relation to the management of declared weeds and prevention of their spread.
- *Workplace Health and Safety Act* – this act aims to promote health and safety in the workplace and together with the *Dangerous Goods Act* requires that a Risk Management Plan be submitted to NT WorkSafe covering the occupational health and safety aspects of the mining operation.

2.3 Local Government

2.3.1 NT Planning Scheme

The NT Planning Scheme, prepared in accordance with the Planning Act, allows for an integrated planning scheme for land use and development throughout the Northern Territory. The scheme provides policy and guidelines on land use and development of designated areas zoned under the scheme. The project encompasses an unzoned area and as such is not subject to land use controls under the Planning Act (or scheme). The exception to this will be infrastructure constructed at Tennant Creek and East Arm Port; however, these will be assessed independently of the EIS and as such are not included in this document.

2.3.2 Barkly Shire Council

The project area falls within the Barkly Shire Council which is covered by the Regional Management Plan – Central Australia Region. The Regional Management Plan addresses key issues relating to local government in the region and includes resource sharing between local councils and regional development. Barkly Shire Council also has a set of by-laws and the project will operate under the appropriate by-laws of the Barkly Shire.

2.4 Standards and Codes of Practice

The construction and operation of the project will take into consideration all applicable standards and codes of practice, including those listed in Table 2.1. And, although not signatories of the framework, Minemakers will be guided by the principles of 'Enduring Value', the Australian Minerals Industries Framework for Sustainable Development.

Table 2.1 Standards and codes of practice

National Standard for Manual Handling.	NOHSC:1001(1990)
National Occupational Health and Safety Certification Standard for Users and Operators of Industrial Equipment, 3rd Edition.	NOHSC: 1006 (2001)
National Standard for Occupational Noise.	NOHSC:1007 (2000)
National Standard for the Control of Inorganic Lead at Work.	NOHSC:1012 (1994)
National Standard for the Control of Major Hazard Facilities.	NOHSC:1014 (2002)
Safe working in a confined space.	AS/NZS 2865:2001
Recommended practices for eye protection in the industrial environment.	AS/NZS 1336:1997
Selection, use and maintenance of respiratory protective devices.	AS/NZS 1715:2009
Occupational protective helmets – selection, care and use.	AS/NZS 1800:1998
Occupation protective gloves – selection, use and maintenance.	AS/NZS 2161.1:2000
Occupational protective footwear: guide to selection, care and use.	AS/NZS 2210.1:1994
Clothing for protection against heat and flame - General recommendations for selection, care and use of protective clothing	AS/NZS 2801:2008
Occupational protective clothing - Guidelines on the selection, use, care and maintenance of protective clothing	AS/NZS 4501.1:2008
Industrial fall-arrest systems and devices – selection, use and maintenance.	AS/NZS 1891.4:2000
Occupational noise management – hearing protector program.	AS/NZS 1269.3:2005
Classification of hazardous areas – examples of classification – general.	AS/NZS 2430.3.1:2004

Table 2.1 Standards and codes of practice (cont'd)

Evaluation of human exposure to whole-body vibration – general requirements.	AS 2670.1-2001
Fixed platforms, walkways, stairways and ladders – design, construction and installation.	AS 1657-1992
Power-actuated hand-held fastening tools - charges.	AS/NZS 1873.3:2003
Power-actuated hand-held fastening tools - fasteners.	AS/NZS 1873.4:2003
In-service safety inspection and testing of electrical equipment.	AS/NZS 3760:2003
Portable fire extinguishes and fire blankets – selection and location.	AS 2444-2001
Minimum design loads on structures.	AS1170: 2002
Methods of testing soils for engineering purposes.	AS1289.0:2000
Specification and supply of concrete.	AS 1379-2007
Geotechnical site investigations.	AS 1726-1993
Piling design.	AS 2159-1995
Concrete structures.	AS 3600-2001
Formwork for concrete.	AS 3610-1995
Guidelines on earthworks for commercial and residential developments.	AS 3798-2007
Portland and blended cements - Steel structures.	AS 3972-1997
Steel reinforcing materials.	AS/NZS 4671:2001
Earth retaining structures.	AS 4678-2002
Bridge design.	AS 5100
Austroads Rural Road Design – A Guide to the Geometric Design of Rural Roads.	AP-G1/03
Austroads Pavement Design – A Guide to the Structural Design of Road Pavements.	AP-G17/04
Austroads Waterway Design – A Guide to the Hydraulic Design of Bridges.	AP-23/94
The storage and handling of flammable and combustible liquids.	AS 1940-2004
Code of Practice for Small On-site Sewage and Sullage Treatment Systems and the Disposal or Reuse of Sewage Effluent -	
Leading Practice Sustainable Development Program for the Mining Industry. Commonwealth of Australia.	
Mine Close Out Criteria: Life of Mine Planning Objectives. Northern Territory Government.	