

## 4. Legislative Framework

### 4.1 Overview

This chapter provides a legislative overview for the Project including relevant Commonwealth and Northern Territory legislation and guidelines.

Chapter 1 provides an overview of the environmental assessment process.

### 4.2 Commonwealth Legislation

#### ***Environment Protection and Biodiversity Conservation Act (EPBC Act)***

Assessment under the EPBC Act is required for actions that are likely to have a significant impact on a Matter of National Environmental Significance (MNES). The MNES include:

- ▶ world heritage properties;
- ▶ national heritage places;
- ▶ wetlands of international importance (listed under the Ramsar Convention);
- ▶ listed threatened species and ecological communities;
- ▶ migratory species (protected under international agreements);
- ▶ Commonwealth marine areas;
- ▶ the Great Barrier Reef Marine Park;
- ▶ nuclear actions (including uranium mines); and
- ▶ a water resource, in relation to coal seam gas development and large coal mining development.

The environment under the EPBC Act includes:

- a) ecosystems and their constituents;
- b) natural and physical resources;
- c) qualities and characteristics of locations, places and areas;
- d) heritage values of places; and
- e) social, economic and cultural aspects.

The Mount Peake Project (the action) was referred to the Department of the Environment (DotE) on 14 October 2013. On 13 November 2013, DotE determined the proposed action was a controlled action and required assessment under the EPBC Act before it could proceed (Appendix B). The controlling provision was listed threatened species and communities (sections 18 and 18A). The DotE also determined that accredited assessment at the level of Environmental Impact Statement under the Northern Territory *Environmental Assessment Act* was applicable.

On 11 March 2015 a request to vary the action under section 156B of the EPBC Act was submitted to the DotE. The variation removed the hydrometallurgical processing plant and a gas / slurry pipeline infrastructure corridor linking the mine site with a rail siding at Adnera, and confirms that trucking will be used to transport magnetite concentrate to the rail head and that the gas pipeline (if required) will be located within the transport corridor. On 8 April the DotE confirmed acceptance of the variation and that the originally identified controlling provisions would still apply (Appendix B).



### ***Native Title Act***

The *Native Title Act* provides for the recognition and protection of native title and contains processes for effecting native title claims. The Act sets out processes by which native title rights are established, protected and compensation determined, in addition to facilitating Indigenous Land Use Agreements (ILUA's) between native title parties and other interest holders.

The objectives of the *Native Title Act* are to:

- ▶ provide for the recognition and protection of native title;
- ▶ establish ways in which future dealings affecting native title may proceed and to set standards for those dealings;
- ▶ establish a mechanism for determining claims to native title; and
- ▶ provide for, or permit, the validation of past acts, and intermediate period acts, invalidated because of the existence of native title.

The Mount Peake Project tenements are covered by a native title application. Registration of Native Title Determination Application – DC11/12 Stirling and Neutral Junction NTD17/2011 was registered with the National Native Title Tribunal on 17 August 2011 under section 190A of the *Native Title Act*. The application was accepted for registration and entered onto the Register of Native Title Claims on 19 August 2011.

The Native Title Claimant Group comprises members of the Akalpere, Amakweng, Alapanp, Alhalker Anangker, Arlwekarr, Arnerre, Arnmanapwenty, Errene/Warlukurlangu, Jarra Jarra, Kwerrkepentye, Twerrpe, Wake and Wurrulju landholding groups.

TNG and the Native Title Claimant Group are discussing development of an ILUA.

### ***Aboriginal Land Rights (Northern Territory) Act***

This Act provides for the granting of freehold title to traditional Aboriginal owners of land in the Northern Territory, the establishment of Land Councils, and the establishment and management of Land Trusts to hold the Aboriginal land for the benefit of traditional owners of the land. The Act also regulates exploration and mining on Aboriginal land and sets out the processes to be followed when negotiating with Traditional Owners for access to, and leases over, Aboriginal land. An exploration licence cannot be granted in relation to Aboriginal land without the consent of the relevant Land Council (for the traditional owners) and the Minister. A mineral lease cannot be granted unless an agreement has been entered into under the Act.

### ***Aboriginal and Torres Strait Islander Heritage Protection Act***

This Act makes provision for the preservation and protection from injury or desecration of areas and objects in Australia and in Australian waters, being areas and objects that are of particular significance to Aboriginal people in accordance with Aboriginal tradition. TNG will comply with relevant provisions of this Act.



### **National Environment Protection Council Act (NEPC Act)**

The National Environment Protection Council (NEPC) comprises environment ministers from the Australian Government and each state and territory and was established under the NEPC Act and corresponding legislation in the other jurisdictions (e.g. *National Environment Protection Council (Northern Territory) Act*). The purpose of NEPC is to ensure that:

- ▶ Australians enjoy the benefit of equivalent protection from air, water or soil pollution and from noise wherever they live; and
- ▶ business decisions are not distorted and markets are not fragmented by variations in major environment protection initiatives between member governments.

NEPC has powers to make National Environment Protection Measures (NEPMs) on:

- ▶ ambient air quality;
- ▶ ambient marine, estuarine and fresh water quality;
- ▶ the protection of amenity in relation to noise (but only if differences in environmental requirements relating to noise would have an adverse effect on national markets for goods and services);
- ▶ general guidelines for the assessment of site contamination;
- ▶ environmental impacts associated with hazardous wastes;
- ▶ the re-use and recycling of used materials; and
- ▶ motor vehicle noise and emissions (in consultation with the National Transport Commission).

The Air NEPM sets national standards for the six key air pollutants to which most Australians are exposed: carbon monoxide, ozone, sulfur dioxide, nitrogen dioxide, lead and particles.

Ambient Air Quality NEPM standards have been adopted for the Project. TNG will also comply with compulsory annual reporting if Project emissions exceed thresholds outlined in the Act.

### **National Greenhouse and Energy Reporting Act (NGER Act)**

The NGER Act introduced a single national framework for reporting and disseminating company information about greenhouse gas emissions, energy production, energy consumption and other information specified under NGER legislation.

The objectives of the NGER Act are to:

- ▶ inform government policy;
- ▶ inform the Australian public;
- ▶ help meet Australia's international reporting obligations;
- ▶ assist Commonwealth, state and territory government programs and activities; and
- ▶ avoid duplication of similar reporting requirements in the states and territories.

Facility and corporate group thresholds define which corporations are affected by the NGER Act. Both the facility and corporate group thresholds have three components:

- ▶ a greenhouse gas emissions threshold;
- ▶ an energy production threshold; and
- ▶ an energy consumption threshold.

If a corporation meets or exceeds one or more of the thresholds for a reporting year, they must register and report for the first year the threshold is reached and for each year thereafter that the corporation remains registered. The facility thresholds are:

- ▶ 25,000 t or more of greenhouse gases - carbon dioxide equivalence (CO<sub>2</sub>-e);
- ▶ production of 100 terajoules (TJ) or more of energy; or
- ▶ consumption of 100 TJ or more of energy.

Corporate group thresholds are:

- ▶ 50,000 t or more of greenhouse gases (CO<sub>2</sub>-e);
- ▶ production of 200 TJ or more of energy; or
- ▶ consumption of 200 TJ or more of energy.

The Project will trigger both the facility and corporation reporting thresholds.

#### ***Leading Practice Sustainable Development Program for the Mining Industry***

This program promotes sustainable development and industry self-regulation through proactive adoption of leading practice principles. The Department of Industry and Science administers the program.

The program provides practical guidance to the mining industry through handbooks and workshops. Resources assist with the implementation of leading practice, and offer the mining industry and other stakeholders the opportunity to improve their social and environmental performance.

TNG proposes to undertake its activities, where possible, in line with the leading practice standards set out by the program. Handbooks applicable to the Mount Peake Project include:

- ▶ A Guide to Leading Practice Sustainable Development in Mining;
- ▶ Airborne Contaminants, Noise and Vibration;
- ▶ Biodiversity Management;
- ▶ Community Engagement and Development;
- ▶ Evaluating Performance: Monitoring and Auditing;
- ▶ Hazardous Materials Management;
- ▶ Managing Acid and Metalliferous Drainage;
- ▶ Mine Closure and Completion;
- ▶ Mine Rehabilitation;
- ▶ Risk Management;
- ▶ Stewardship;
- ▶ Tailings Management;
- ▶ Water Management; and
- ▶ Working with Indigenous Communities.



### 4.3 Northern Territory Legislation

#### *Mineral Titles Act*

The *Mineral Titles Act* establishes the framework to explore for, and mine, mineral resources. The Act sets out the administrative processes for authorising these activities through the granting of a title. The objects of the *Mineral Titles Act* are to:

- ▶ establish a framework for granting and regulating mineral titles that authorise exploration for, and extraction and processing of, minerals and extractive minerals;
- ▶ facilitate the commercialisation of activities conducted under mineral titles by authorising the creation and transfer of interests in the titles; and
- ▶ authorise other activities relating to minerals or extractive minerals to be conducted without mineral titles.

#### *Mining Management Act*

The *Mining Management Act* provides for authorisation of mining activities, management of mining sites, protection of the environment on mining sites and related purposes. The Act is administered by the Department of Mines and Energy (DME). The objectives of the Act are to:

- ▶ ensure the development of the NT's mineral resources in accordance with environmental standards consistent with best practice in the mining industry;
- ▶ protect the environment by:
  - requiring authorisation for and monitoring of mining activities;
  - requiring appropriate management of mining sites through implementation of management systems;
  - facilitating consultation and cooperation between management and workers in implementing environment protection management systems;
  - implementing audits, inspections, investigations, monitoring and reporting to ensure compliance with agreed standards and criteria; and
  - specifying the obligations of all persons on mining sites with respect to protection of the environment.
- ▶ assist the mining industry to introduce programs of continuous improvement to achieve best practice environmental management;
- ▶ enable persons connected with the mining industry to participate in the implementation of this Act through the establishment of a Mining Board to advise the Minister on:
  - guidelines for the industry;
  - specification of competencies required by persons involved in the industry;
  - best practice in mining activities; and
  - minimising the liability of the Territory by requiring the payment of security to provide for the rehabilitation of mining sites or to rectify environmental harm caused by mining activities.



The Mining Management Amendment Bill 2011 came into force on 1 July 2012. Key changes include:

- ▶ enabling the Chief Executive Officer (CEO) of DME to require investigations of less-serious environmental incidents that do not result in material environmental harm (in addition to the current requirements for incidents causing material environmental harm);
- ▶ allowing the publication of reports by operators or mining officers following environmental incidents;
- ▶ obligation for mining operations on mineral leases to publically report environmental performance in the form of a Environmental Mining Report (EMR) which forms part of the annually submitted Mining Management Plan (MMP);
- ▶ introducing new environmental offences and confirming the application of Part IIAA of the Criminal Code Act (NT) (the Criminal Code) to offences under the Act; and
- ▶ Community Benefits Plan (CBP) required for mining authorisation of a new mine.

Approval for the Project is required from the Minister for Mines and Energy. The environmental assessment process will allow the Minister to be informed of potential environmental impacts and proposed management to assist in the decision making process.

An approved MMP will be required prior to commencement of proposed works if the Project is approved. The Minister will require security for potential costs of rectifying environmental harm and rehabilitating the site.

#### **Environmental Assessment Act (EA Act)**

The environmental assessment process is administered under the EA Act taking into account the Environmental Assessment Administrative Procedures. The EA Act ensures that each matter affecting the environment is examined and taken into account in relation to:

- ▶ formulation of proposals;
- ▶ carrying out of works and other projects;
- ▶ negotiation, operation and enforcement of agreements and arrangements (including agreements and arrangements with authorities of the Commonwealth, the states and other territories);
- ▶ making of, or the participation in the making of, decisions and recommendations; and
- ▶ incurring of expenditure.

In June 2013, TNG submitted a Notice of Intent for the Mount Peake Project to the NT Environment Protection Authority (NT EPA). On 13 November 2013 the NT EPA determined that the Mount Peake Project required assessment under the EA Act at the level of an Environmental Impact Statement (Appendix B). Terms of Reference for the EIS were issued on 7 March 2014 (Appendix C).

On 9 March 2015 the NT EPA was notified that changes had been made to the Mount Peake Project. The changes remove the hydrometallurgical processing plant and a gas/slurry pipeline infrastructure corridor linking the mine site with a rail siding at Adnera, and confirm that trucking will be used to transport magnetite concentrate to the rail head and that a gas pipeline, if required, will be located within the transport corridor. In accordance with clause 14A of the Environmental Assessment Administrative Procedures, the NT EPA decided that the changes do not alter the environmental significance of the Project, that the Project will continue to be assessed at the level of an EIS, and that the Terms of Reference issued on 7 March 2014 will not be amended (Appendix B).



### ***Northern Territory Environmental Protection Authority Act***

This Act came into force on 1 January 2013 and established the new Northern Territory Environment Protection Authority (NT EPA) as an independent regulatory authority and makes consequential amendments to the *Waste Management and Pollution Control Act* (WMPC Act) and the EA Act.

Amendments to the WMPC Act identify the NT EPA as the entity responsible for administration of the regulatory functions of that Act.

Amendments to the EA Act also identify the NT EPA as the entity responsible for administration of the assessment functions and impose additional transparency and reporting responsibilities on the Environment Minister and the responsible Minister for specific projects.

### ***Northern Territory Aboriginal Sacred Sites Act***

This Act is administered by the Aboriginal Areas Protection Authority (AAPA). The Act provides for the location, recognition, description and protection of sites sacred under Aboriginal tradition. All sacred sites (even if not registered) are protected under the Act and it is an offence to enter or carry out work on a sacred site without permission or an Authority Certificate. The certificate sets out conditions under which the work may be carried out.

Consultation with the CLC has been undertaken by TNG as part of Project development activities.

A number of sacred sites are present in proximity to the mining area and access road. CLC has provided TNG with Sacred Site Clearance Certificate for the Project. Data provided by the CLC has informed TNG of no-go areas for the location of Project elements and has resulted in TNG modifying the alignment of the access road to avoid a known site.

### ***Heritage Act***

The *Heritage Act* provides a system for the identification, assessment, protection and conservation of the NT's natural and cultural heritage. Heritage includes fossils, buildings, gardens, ruins, archaeological sites, landscapes, ecosystems, coastlines, plant and animal communities.

Chapter two of the Act allows for the establishment of the NT Heritage Register. Members of the community can nominate areas, places, sites, buildings, shipwrecks and heritage objects to the register. If the Minister agrees that those features are of special significance to the heritage of the NT, the place is added to the register. The place will then be protected from accidental and deliberate damage or harm. The Act allows for processes to approve works and maintenance for a heritage place. There are no nominated or declared heritage places in the Mount Peake Project area.

Sections 17 and 18 of the Act declare all Aboriginal and Macassan archaeological places and objects heritage places, providing the same level of protection as places on the Heritage Register. Part 3.2 of the Act allows for applications to work on heritage places, including work on, or salvage of, Aboriginal archaeological sites. In practice, permits to salvage Aboriginal Archaeological places will be issued under conditions which include the approval of the appropriate Traditional Owner or Site Custodian for a site. Permits under the Act will also require reasonable study of each site disturbed, and appropriate curation of any artefacts salvaged.

The Act includes a provision for the declaration of classes of places or objects that are known to be of significance in the NT but where not all locations are currently mapped and recorded.

An archaeological survey of the Project area has been undertaken 16 new archaeological sites have been recorded. Recommendations are made in relation to protection of sites and some changes to the Project have been made to avoid the sites.



### **Water Act**

The *Water Act* covers allocation, use, control, protection and management of NT water resources. Pollution under the Act includes directly or indirectly altering the physical, thermal, chemical, biological or radioactive properties of the water so as to render it less fit for a prescribed beneficial use for which it is or may reasonably be used, or to cause a condition which is hazardous or potentially hazardous to:

- ▶ public health, safety or welfare;
- ▶ animals, birds, fish or aquatic life or other organisms; and
- ▶ plants.

A Waste Discharge Licence (WDL) for the Project will be required under the Act if water is to be discharged off site.

Under section 7 of the *Water Act*, permits and licenses for groundwater extraction are not required for the Mount Peake Project as groundwater will be used for a mining activity or for a purpose ancillary to a mining activity, including the use of water as drinking water. The *Water Act* also does not apply to the taking of water for the purpose of roadwork's (Government Gazette, No S60, 28 November 2008).

### **Waste Management and Pollution Control Act**

The purpose of this Act is to protect the environment through objectives and approvals, encouraging effective and responsible waste management and reduction and response to pollution. This Act facilitates the implementation of national environment protection measures made under the *National Environment Protection Council (Northern Territory) Act*, and incorporates environmental compliance plans and audits.

Section 14 of the Act establishes a process for notifying the NT EPA (the administering agency for the Act) about incidents causing, or threatening to cause pollution. Schedule 2 of the Act requires environment protection/licensing for certain activities.

### **Territory Parks and Wildlife Conservation Act (TPWC Act)**

The TPWC Act lists species of plants and animals that are protected within the Northern Territory. Under this Act, permits will be required to take or interfere with protected plants or animals. This may apply if protected plants or animals are encountered during the project's life.

TNG will seek all appropriate permits and approvals required under this Act. No species of plants or animals protected under the Act are proposed to be significantly impacted by the Project.

### **Weeds Management Act**

The purpose of the Act is to:

- ▶ prevent the spread of weeds in, into and out of the NT and to ensure that the management of weeds is an integral component of land management in accordance with the NT Weeds Management Strategy 1996 – 2005 or any other strategy adopted to control weeds in the NT;
- ▶ ensure there is community consultation in the creation of weed management plans; and
- ▶ ensure that there is community responsibility in implementing weed management plans.

The Alice Springs Regional Weed Management Plan 2013 - 2018 supports landholders in their obligations to manage weeds on their land.



The NT Government uses the 'NT Weed Risk Management System' to identify and prioritise plants to be considered for declaration as weeds in accordance with the Act and to determine the appropriate management response for those plants. Declared species are assessed on the severity of impact and likelihood of its control using a number of parameters including:

- ▶ invasiveness: mode of reproduction, and potential to disperse;
- ▶ impacts: capacity to modify the environmental, social or economic values; and
- ▶ distribution: current distribution and potential distribution based on favoured habitat.

Also considered are:

- ▶ costs and ease of control: ease of detection, accessibility of the site, cost of control methods and effectiveness, time to reproduction from a new plant, reproductive capacity (e.g. duration the weed may reproduce and the amount of reproductive parts) and factors contributing to the spread or establishment of the weed; and
- ▶ persistence: how long propagules may remain viable in the environment and the probability of re-invasion.

The Weeds Management Act states that the owner and occupier of land must:

- ▶ take all reasonable measures to prevent the land being infested with a declared weed;
- ▶ take all reasonable measures to prevent a declared weed or potential weed on the land spreading to other land; and
- ▶ within 14 days after first becoming aware of a declared weed that has not previously been known to be present on the land, notify an officer of the weeds location.

#### **Other Northern Territory legislation**

Other legislation that may be applicable to the project includes:

- ▶ *Biological Control Act*,
- ▶ *Bushfires Act*,
- ▶ *Civil Aviation Act*,
- ▶ *Control of Roads Act*,
- ▶ *Crown Lands Act*,
- ▶ *Dangerous Goods Act*,
- ▶ *Environmental Offences and Penalties Act*,
- ▶ *Fire and Emergency Act*,
- ▶ *Liquor Act*,
- ▶ *Mining Royalty Act*,
- ▶ *Motor Vehicles Act* and Motor Vehicles (Standards) Regulations;
- ▶ *National Environment Protection Council (Northern Territory) Act*,
- ▶ *Planning Act*,
- ▶ *Poisons and Dangerous Drugs Act*,



- ▶ *Public and Environmental Health Act;*
- ▶ *Road Traffic Act;*
- ▶ *Soil Conservation and Land Utilisation Act;*
- ▶ *Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act;*
- ▶ *Traffic Act;*
- ▶ *Work Health and Safety Act;* and
- ▶ *Work Health and Safety (National Uniform Legislation) Act.*

#### ***Northern Territory Guidelines***

NT EPA draft and current Guidelines relevant to the Project include:

- ▶ Environmental Assessment Guidelines on Acid and Metalliferous Drainage (AMD);
- ▶ Guidelines for Assessment of Impacts on Terrestrial Biodiversity;
- ▶ Guidelines for the Preparation of an Economic and Social Impact Assessment;
- ▶ Guidelines on Conceptual Site Models;
- ▶ Guidelines on Environmental Offsets and Associated Approval Conditions; and
- ▶ Draft Guideline for the Preparation of an Environmental Management Plan.

