

## 3. LEGISLATIVE CONSENT AND LICENSING REQUIREMENTS

### 3.1 COMMONWEALTH

Within Australia's federal system of government, both the regulation of mining operations and the protection of the environment are principally state or territory responsibilities. Commonwealth approval is needed if matters of national significance, as defined in the *Environment Protection and Biodiversity Conservation (EPBC) Act 1999*, are triggered. The Department of the Environment and Heritage (DEH) is responsible for administering the *Act*. Matters of national significance include the presence of migratory birds, federally listed rare flora or fauna, Commonwealth land, heritage sites, nuclear actions and marine areas.

Commonwealth powers to regulate mining and other activities concerning the environment are primarily contained in Section 51 of the Commonwealth *Constitution*. Of particular importance are the trade and commerce power; taxation power; quarantine power; the corporations power; external affairs power; power over Commonwealth instrumentalities and public service; power over customs, excise and bounties; financial assistance power; and territories power. Importantly Commonwealth law prevails where any law of a state or territory is inconsistent with a Commonwealth law. The Commonwealth therefore has the ability to override territory laws in areas within its legislative competence.

A project is referred to DEH where it is possible that it will trigger matters of national significance under the *Act*. The DEH may delegate the assessment process and day-to-day administration of mines to state and territory governments. This approach minimises unnecessary duplication in administrative processes.

On 17 January 2006, Territory Iron submitted an EPBC Referral Report to DEH for the Frances Creek project. In response to this referral, DEH notified Territory Iron on 17 February 2006 that the Frances Creek project was deemed a Controlled Action under Part 9 of the *EPBC Act 1999* and requires approval under the *Act*. This was triggered under the controlling provisions Part 3, Division 1 namely:

- Sections 12 and 15A (World Heritage).
- Sections 18 and 18A (listed Threatened species and communities).
- Sections 20 and 20A (listed Migratory species).

DEH has advised Territory Iron that the most significant factor in listing was potential occurrence in the project area of the threatened bird species, the Gouldian Finch (*Erythrura gouldiae*). Potential downstream impacts on the Kakadu World Heritage area were also a factor in the decision.

The proposed project will be assessed under the Bilateral Agreement signed by the Australian and Northern Territory governments under Section 45 of the *EPBC Act 1999*. This provides for accreditation of certain state environmental assessment processes including an EIS and PER under the Northern Territory *Environmental Assessment Act 1994*. This process is further discussed in Section 3.1.1.

### 3.1.1 Bilateral Agreement

The Northern Territory and Federal governments entered a Bilateral Agreement on environmental impact assessment in 2002. The agreement aims to “minimise duplication of environmental impact assessment processes, strengthen intergovernmental cooperation and promote a partnership approach to environmental protection and biodiversity conservation” (Australian Government, 2002). The Bilateral Agreement also provides accreditation of the Northern Territory environmental impact process, as set out in Schedule 1 to the Agreement. This accreditation ensures that actions requiring approval from both the Federal and Northern Territory governments are co-ordinated and integrated. It also allows the Federal Government to rely on the Northern Territory assessment process.

Procedures to be followed by both Northern Territory and Federal governments are set out in Sections 12 to 20 of the Agreement. These procedures include:

- The Northern Territory encouraging referral of projects/actions to the Federal Government.
- The Federal Government informing the Northern Territory of outcomes of decisions on referrals.
- The Northern Territory ensuring and confirming an accredited process where actions are assessed in line with the Bilateral Agreement.
- The Northern Territory providing a copy of the Assessment Report and/or any other documents relevant to the assessment to the Federal Environment Minister no later than 10 days after the Assessment Report is accepted by the Northern Territory Environment Minister.
- The Federal Government providing the Northern Territory with a copy of any additional information used in its decision on the assessment.
- The Northern Territory and Federal governments informing each other of conditions applying to proposal approval and to avoid inconsistent conditions.
- The Northern Territory and Federal governments co-operating in monitoring compliance with conditions relating to matters of national significance.
- Both parties must be made aware of a breach of conditions relating to matters of national significance and approve any enforcement action to be taken.
- The Northern Territory and Federal governments jointly developing administrative procedures so that the Agreement is administered efficiently and in accordance with each government’s legal requirements.

The Northern Territory Government will generally provide a copy of the proponent’s assessment documentation to the Federal Government at each stage of the process to ensure that Federal concerns and comments are taken into account throughout the process.

Direct implications of Bilateral Assessment on this PER are:

- Federal Government input in specifying PER Guidelines.
- Including a separate section of the PER (Section 9) addressing issues subject to the *EPBC Act*.

- Territory Iron preparing and submitting an addendum to the PER which addresses input received during the public comment period.
- Federal and Northern Territory government assessment of the PER.

## 3.2 NORTHERN TERRITORY

Key Northern Territory environmental legislation applicable to the project includes:

- *Mining Management Act 2001.*
- *Mining Act 1982.*
- *Bushfires Act 1980.*
- *Environmental Assessment Act 1982.*
- *Waste Management and Pollution Control Act 2003.*
- *Environmental Offences and Penalties Act 1996.*
- *Heritage Conservation Act 1991.*
- *Aboriginal Sacred Sites Act 1989 (Sacred Sites Act).*
- *Weeds Management Act 2001.*
- *Ozone Protection Act 1996.*
- *Northern Territory Water Act 1992.*
- *Soil Conservation and Land Utilization Act 1978.*
- *Territory Parks and Wildlife Conservation Act 2001.*
- *Pastoral Land Act 1992 (section 38).*
- *Planning Act 1999.*

### 3.2.1 Environmental Impact Assessment

The *Environmental Assessment Act 1982* and *Environmental Assessment Administrative Procedures 1984*, which accompanies the Act, form the basis for the Northern Territory's environmental impact assessment process. The Minister for Environment and Heritage administers the Act, determines which proposals should be assessed under the Act and decides the appropriate level of assessment in each case. The Department of Natural Resources, Environment and the Arts (NRETA) helps implement assessment procedures on behalf of the Minister.

Where a proposal is considered to have a significant environmental impact, the Minister for Environment and Heritage directs the proponent to prepare and submit a PER or an Environmental Impact Statement (EIS) and advises the Minister for Mines and Energy of this requirement.

Territory Iron submitted a Notice of Intent document to the Department of Primary Industries, Fisheries and Mines (DPIFM) on 9 November 2005. A Project Review Committee containing representatives of DPIFM and NRETA considered the project in December 2005.

On 20 December 2005, the Minister for Environment and Heritage determined that under the *Environmental Assessment Act 1982* the Frances Creek project was to be assessed through the PER process. The assessment level was set at PER level because it was considered that potential environmental impacts of the Frances Creek project were significant, but limited in extent. Draft PER guidelines were published on 25 February 2006 and open for public comment for 14 days. Final guidelines were issued on 29 March 2006 (Appendix 1).

When the PER is lodged it will be exhibited for public review and comment for four weeks. During this time the PER will be circulated to advisory bodies for comment.

The Environmental Protection Agency of NRETA will prepare an assessment report and recommend project approval or non-approval to the Minister for Environment and Heritage. The report takes into account issues raised by the advisory bodies, the public and Territory Iron's response to the issues. The Minister for Environment and Heritage considers this report and makes recommendations regarding approval of the Frances Creek project. These recommendations may be incorporated in the environmental assessment process, in lease or license conditions, or relevant management procedures.

It is anticipated that emissions to land, air or water will be licensed according to DPIFM requirements. An authorisation under the *Mining Management Act* licences waste rock, tailings waste, landfill, industrial and domestic refuse, storage of contaminated waste, land application and surface runoff. Territory Iron will implement procedures to ensure compliance with regulatory requirements at all times.

### **3.2.2 Mining Management**

Northern Territory mining operations are regulated by the *Mining Management Act 2001*, administered by DPIFM. The *Act* amalgamates all operational provisions for mining into a single statute leaving the *Mining Act 1982* to regulate titles. The *Mining Act 1982* contains limited provisions governing environmental performance, although the Minister can attach specific environmental conditions as part of the grant of tenement.

Before mining starts, the mining site operator must apply for an authorisation to carry out mining activities. A Mining Management Plan (MMP) must accompany the application. The MMP is attached to the authorisation and is the principal administrative document for the mine. The MMP is reviewed at specified intervals as set out in the authorisation and, if changes occur, the MMP must be amended and submitted to the Minister for acceptance.

Territory Iron will submit a Mining Management Plan (MMP) including an Environmental Management Plan (EMP) after completing the environmental assessment process. A draft Environmental Management Plan is included in this PER.