



**Aboriginal Areas
Protection Authority**

protecting sacred sites across the territory

Department of Environment, Parks and Water Security

Via email: environment.policy@nt.gov.au

Dear Environment Policy team,

Mining Reforms – Draft Risk Criteria and Standard Conditions

Thank you for the opportunity to comment on the draft standard conditions and risk criteria for exploration and mining activities. We provide some feedback and recommendations below, and welcome further discussion about these matters.

Background

1. The Aboriginal Areas Protection Authority (the **Authority**) is a statutory body established under the *Northern Territory Aboriginal Sacred Sites Act 1989* (**Sacred Sites Act**) and is responsible for overseeing the protection of Aboriginal sacred sites on land and sea across the Northern Territory. The protection of Aboriginal sacred sites is recognised by the Northern Territory Government and broader Territory community as an important element in the preservation of the Territory's cultural heritage for the benefit of all Territorians.
2. The Sacred Sites Act provides a framework for the protection of sacred sites, a key mechanism being the issuing of Authority Certificates. Authority Certificates are based on consultation with the custodians of sacred sites, and provide a legal indemnity against the offence provisions in the Sacred Sites Act.
3. Offences under the Sacred Sites Act relate to entering a sacred site, working on a sacred site without an Authority and desecrating a sacred site, among other offences, and carry penalties for individuals of up to 400 penalty units or imprisonment for 2 years (or 2000 penalty units in the case of a body corporate).
4. For most activities Authority Certificates are not mandatory,¹ however they are an invaluable risk management tool for mining companies and other developers of land.
5. Exploration and Mining activities entail inherent risk for the protection of Aboriginal sacred sites. However, these risks can be adequately mitigated and managed for the benefit of all stakeholders through the processes under the Sacred Sites Act. As such,

¹ Authority Certificate are mandatory in relation to onshore gas activities as per s.9(1)(d) *Petroleum (Environment) Regulations 2016* (NT).

Darwin

P: +61 (08) 8999 4365
F: +61 (08) 8999 4334
www.aapant.org.au
enquiries.aapa@nt.gov.au
4th Floor, R.C.G Centre
47 Mitchell Street DARWIN NT
GPO Box 1890, DARWIN NT 0801

Alice Springs

P: +61 (08) 8951 5023
F: +61 (08) 8951 7398
www.aapant.org.au
enquiries.aapa@nt.gov.au
1st Floor, NT House
44 Bath Street ALICE SPRINGS NT
All mail to Darwin GPO

the processes available under the Sacred Sites Act, including the offence provisions, should be highlighted in the framework for the environmental regulation of mining.

Specific concerns

6. The Authority is concerned that the process and conditions for Standard Condition Licences (SCL) do not accommodate public comment, and it is unclear if this would also extend to other regulators. As highlighted in this submission, low impact and low risk mining activities may entail significant risk for the protection of sacred sites. Currently the standard conditions do not address this risk, nor do they provide a clear pathway to the Sacred Sites Act to mitigate this risk.
7. As a general observation the Draft Risk Criteria and Standard Conditions should be as explicit about the economic, cultural and social aspects of the environment as they are about the physical and biological elements.
8. The provisions of a Standard Condition Licence (SCL) for exploration and mining activities describe the environmental constraints the operator must work within. However, it does not refer to preventing damage to Aboriginal sacred sites.
9. The EPA Referral guidance includes a range of environmental factors to consider potential impacts of an activity, including the culture and heritage factor. However, while the risk criteria and conditions for a SCL appear to consider most of the EPA factors, they omit consideration of the culture and heritage factor, which is an integral part of the assessment process.
10. The SCL is applicable where the operational footprint and the potential environmental impact is small and will not be made available for public comment. Regardless of the scale of the environmental footprint, the mining or exploration activity may be within a sacred site, pose a risk to a sacred site, or the environmental effects could damage a sacred site.
11. The SCL does not offer the Authority the opportunity to raise concerns about sacred sites with the Minister prior to the issue of an environmental (mining) licence. It is the Authority's view that the Minister should have regard to the protection of sacred sites when defining standard conditions, or imposing conditions on an environmental (mining) licence.
12. Under the *Environment Protection Act 2019* the Minister is required to consider an applicant's suitability to hold an environmental (mining) licence. Among other things, this includes consideration of previous contraventions of laws relating to the heritage or cultural matters, including matters relating to sacred sites. However, if the Authority is not made aware of an application for a SCL, then it will be unable to provide advice as to whether an applicant has contravened the Sacred Sites Act. Similarly, the Heritage Branch in the Department of Territory Families, Housing and Communities will be unable to provide such advice.

13. Where a Modified Condition Licence (MCL) or Tailored Condition Licence (TCL) is required, we understand that the draft conditions will be open to public comment, or if referred to the NTEPA, an Environmental Referral will be open to public comment. The Authority currently comments on Environmental Referrals stating whether the proponent has an Authority Certificate and highlighting any risks to sacred sites from the impacts described within the Referral.

Recommendations

14. When considering if a mining or exploration activity meets the conditions for a SCL, DEPWS should formally contact the Authority to :

- a) establish whether there are any concerns regarding an applicant's suitability to hold an environmental (mining) licence;
- b) understand if the proposed activity will impact any Aboriginal sacred sites; and
- c) enable the Authority to contact the applicant and provide further information about Aboriginal sacred sites and mechanisms for their protection under the Sacred Sites Act.

15. Consideration of Aboriginal sacred site protection should be included in the Draft Declaration Risk Criteria – Exploration at general condition 3:

*The mining activity will not be located within:
(v) an Aboriginal sacred site as defined and protected by the Northern Territory Aboriginal Sacred Sites Act 1989 (NT)*

16. Consideration of Aboriginal sacred site protection should be included in the Draft Declaration Risk Criteria – Exploration at general condition 4:

*The mining operator must not undertake any mining activity within:
(viii) an Aboriginal sacred site as defined and protected by the Northern Territory Aboriginal Sacred Sites Act 1989 (NT)*

17. In the document titled 'Notice of the draft declaration of risk criteria and associated statement of reasons for exploration activities', section 10 should be amended to include reference to Aboriginal sacred sites. The statements in Section 11 outlining the influence that the scale and nature of exploration activities may have on risk do not account for risk to 'people and community', or by extension to Aboriginal sacred sites. An Aboriginal sacred site may be substantially impacted by a small-scale exploration activity. These risks can be mitigated by applying the processes of the Sacred Sites Act.

18. Consideration of Aboriginal sacred sites should be included in general condition 5 of the draft standard conditions for exploration mining operations:

*The mining operator must not undertake a mining activity in:
(e) an Aboriginal sacred site as defined and protected by the Northern Territory Aboriginal Sacred Sites Act 1989 (NT)*

19. Consideration of Aboriginal sacred site protection should be included in the document titled 'Draft Declaration Risk Criteria Extractive' at general condition 3:

*The mining activity will not be located within:
(v) an Aboriginal sacred site as defined and protected by the Northern Territory Aboriginal Sacred Sites Act 1989 (NT)*

20. Consideration of Aboriginal sacred site protection should be included in the document titled 'Draft Declaration Risk Criteria Extractive' at general condition 4:

*The mining operator must not undertake any mining activity within a:
(ix) an Aboriginal sacred site as defined and protected by the Northern Territory Aboriginal Sacred Sites Act 1989 (NT)*

21. Consideration of Aboriginal sacred site protection should be included in the document titled 'Draft Declaration Risk Criteria Exploration' at general condition 4:

*The mining operator must not undertake any mining activity within a:
(viii) an Aboriginal sacred site as defined and protected by the Northern Territory Aboriginal Sacred Sites Act 1989 (NT)*

22. In the document titled 'Notice of draft declaration of risk criteria and associated statement of reasons for extractive operations', section 10 should be amended to include reference to Aboriginal sacred sites. The statements in Section 11 outlining the influence that the scale and nature of exploration activities may have on risk do not account for risk to 'people and community', or by extension to Aboriginal sacred sites. An Aboriginal sacred site may be substantially impacted by a small-scale exploration activity. These risks can be mitigated by applying the processes of the Sacred Sites Act.

23. Consideration of Aboriginal sacred sites should be included in general condition 5 of the draft standard conditions for extractive operations:

*The mining operator must not undertake a mining activity in:
(f) an Aboriginal sacred site as defined and protected by the Northern Territory Aboriginal Sacred Sites Act 1989 (NT)*

24. Where the document entitled 'Environmental (Mining) Regulation fact sheet' refers to sacred sites and heritage legislation the word 'may' should be removed, and reference to the relevant legislation and their administering agencies should be included. The Sacred Sites Act and the Heritage Act do apply, and this advice should be explicit.

If you have any queries, or require any further information please contact Secretariat.AAPA@nt.gov.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Benedict Scambary', with a stylized flourish at the end.

Dr Benedict Scambary

Chief Executive Officer
17 July 2024