

20 April 2022

The Honourable Nicole Manison  
Minister for Mining and Industry  
GPO Box 3200  
DARWIN NT 0801

Dear Minister Manison

Re: McArthur River Mine - Independent Monitor Annual Environmental Performance Audit Report 2021

The Department welcomes the opportunity to respond to the Independent Monitor's Annual Environmental Performance Audit Report 2021 (AEPAR) for the period 1 May 2021 through to 30 April 2021.

In summary, I am pleased with the Department's performance as reported by the Independent Monitor.

Key findings of the Independent Monitor's AEPAR with respect to evaluation of the Department include:

- achievement of 100% compliance by the Department against conditions of Authorisation specifically in relation to the Overburden Management Project. This is an indication that the Department is directing effort to activities which have the highest potential environmental risks
- achievement of 97% compliance with respect to implementation of NT EPA recommendations requiring action by the Department
- achievement of 96% compliance against 61 active conditions in Authorisation 0059
- continued attention on the key environmental risk areas resulting in improved performance during the audit period
- no significant environmental issues identified on McArthur River Mine or at Bing Bong Loading Facility requiring urgent investigation
- improved environmental outcomes on site attributable to action taken by the Department to streamline regulation of the mine
- recognition of the Department's strong regulatory focus on key environmental risks and practical approach to compliance and monitoring reporting: *"Continuous improvement and high levels of compliance by the operator are attributed in part to the processes and approach adopted by the Department"*
- review of the risk management processes and frameworks in place by MRM and approved by the Department *"are comprehensive and appropriate in accordance with international risk standard ISO 31000"*

- achievement of the high compliance score by MRM is evidence of MRM's commitment to environmental sustainability and that the Department is successfully regulating the operator through effective administration under the *Mining Management Act 2001*
- the monitoring and management actions of the operator and regulator have protected the health of the McArthur River from mine related impacts.

I acknowledge that the 96% compliance score achieved by the Department while demonstrating strong performance in relation to conditions of Authorisation 0059, leaves room for improvement. In relation to this, I note that the 11 condition elements for which part compliance was reported relate to administrative tasks with minimal, if any, consequence to the environmental performance of the mine and the health of the McArthur River.

In this regard, conditions of Authorisation for example, require McArthur River Mining Pty Ltd (MRM) to demonstrate oversight by an independent certifying engineer of the design, construction and performance review of engineered structures on site such as the North Overburden Emplacement Facility and Tailings Storage Facility. The Department has received all required documentation, however, the timing around submission needs to be more closely monitored.

Further, the Department was deemed to be partly compliant against 15 of the 117 elements derived from the NT EPA recommendations. Again, the majority of the partial compliances are administrative in nature, do not represent a risk to the environment and are largely attributable to timeframes. Part compliance achieved against six items can be attributed to the Department conditioning the authorisation to achieve pragmatic, effective and risk proportionate regulation addressing the intent of the NT EPA recommendations but not mirroring the wording of the relevant recommendations.

The Independent Monitor identified opportunities for improvement to assist the Department to improve its regulatory compliance monitoring activities. Attached to this letter is the Department's response to the opportunities for improvement identified against the three aspects audited by the Independent Monitor: Authorisation 0059 (Table 4-3), NT EPA recommendations (Table 4-5) and Regulatory Approach (Table 4-6). The details in the table attached are an extract from the *Annual Environmental Performance Audit Report 2021* with the Department's response.

The achievement of regulatory compliance scores of 95% or higher by both the operator and the Department can be attributed to the Department's strong commitment to working with operators to develop and implement practical, risk and evidence based conditions to achieve good environmental outcomes on active sites and the operator's focus on ensuring sustainable mining practices.

The Department remains committed to effective regulation of mining activity under the *Mining Management Act 2001* and will continue to work with MRM to protect the health of the McArthur River from mining related impacts whilst supporting the development of the Territory's natural resources to contribute to a \$40 billion economy by 2030 to benefit all Territorians.

Yours sincerely



Anne Tan  
A/Chief Executive Officer

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OFI Ref (Table 4-3)	Authorisation condition	Opportunity for improvement (OFI)	Department response
Mining Management Plan and Reporting			
OFI-21-DE-AUTH-01	7.d,e,g*#	Identify and follow up on any data omissions (i.e. soils, sediments or water transfers in 2021) in the quarterly reports	<p>Addressed</p> <p>The Department conducts routine assessment, compliance and follow-up.</p> <p>During 2021 there were constraints on the provision of some data, e.g. sampling could not be safely undertaken at the scheduled time due to extreme weather conditions. This was explained by MRM and accepted by the Department, as the data omission for this period would have limited impact on assessment of the environment in the short term and in ongoing trend analysis.</p>
OFI-21-DE-AUTH-02	7.d,e,g	Prepare an annual program/register of Operator deliverables and submissions to assist DITT to manage the acknowledgement of receipt, adequacy review of submissions, and timely request for additional information, if required.	<p>Accepted</p> <p>This has also been identified by the Department during review of business practices as an initiative to achieve continuous improvement.</p>
Perimeter Run-Off Dams – SPROD, SEPROD, WPROD and EPROD			
OFI-21-DE-AUTH-03	45\$	Request confirmation from the Operator that EPROD construction is completed and if so, request the construction reports including QA and QC data endorsed by the ICE.	<p>Completed</p> <p>Since the reporting period, as-constructed reports have been received by the Department.</p>
Tailings Storage Facility			



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OFI-21-DE-AUTH-04	46.d, 52.d and 56.a <sup>\$</sup>	Monitor construction progress to identify upcoming completion so that the anticipated date of receipt of construction reports is known in advance and to prompt follow-up action if anticipated due date is passed.	Accepted  The standing item 'Operational updates' is included on the agenda for regular project meetings with the Operator. Construction progress is included in discussions.
Schedule D – Environmental Monitoring and Management			
OFI-21-DE-AUTH-05	Schedule D – 6.a,d,e,f*	Amend the Authorisation to accurately reflect the Environmental Management Plan titles approved in the MMP. (DITT advised this task is underway.)	Accepted  To be addressed when Authorisation 0059 is next varied.

\* 13 November 2020 Authorisation condition number.

\$ 10 August 2020 Authorisation condition number.

# The opportunity for improvement for Conditions 7d, e and g is relevant to both the Operator and DITT.

OFI Ref (Table 4-5)	NT EPA Recommendation <sup>#</sup>	Opportunity for improvement (OFI)	Department response
Inland Water Environmental Quality			
OFI-21-DE-REC-01	8.i	Incorporate into DITT processes a review of the Operator's NOEF management program every three years.	Accepted
OFI-21-DE-REC-02	11.i	Incorporate into the TSF independent panel's terms of reference a review of the Operator's TSF management program every three years.	Accepted  In progress. Terms of reference for independent expert panels are in preparation and will address this OFI.

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OFI Ref (Table 4-5)	NT EPA Recommendation <sup>#</sup>	Opportunity for improvement (OFI)	Department response
OFI-21-DE-REC-03	11.ii	Incorporate into the TSF independent panel's terms of reference a review of the TSF seepage monitoring results and appropriateness of the monitoring program every three years.	Accepted In progress. Terms of reference for independent expert panels are in preparation and will address this OFI.
OFI-21-DE-REC-04	11.cont.	Incorporate into the TSF independent panel's terms of reference a TSF review report every three years to be made available to the Operator, government agencies, CRG and the public	Accepted In progress. Terms of reference for independent expert panels are in preparation and will address this OFI.  The relationship diagram included in the CRG Terms of Reference (included below and available on the Department's website <a href="#">here</a> ) shows DITT is responsible for providing panel reports to other government agencies, the yet be established Community Reference Group (CRG) and the public.
Aquatic Ecosystems			
OFI-21-DE-REC-05	14 <sup>^</sup>	Incorporate into DITT processes a mechanism to confirm that "the results of the ecotoxicological program shall be used to inform trigger criteria in the AMP".	Accepted The Department's periodic review of Adaptive Management Plans (AMP) incorporates checking the operator has incorporated as appropriate findings from any studies completed prior to the updating of the AMP. It is acknowledged this business as usual practice needs to be clearly documented.
OFI-21-DE-REC-06	14.cont. <sup>^</sup>	Incorporate into DITT processes consultation with other government agencies on the preparation and	Accepted

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OFI Ref (Table 4-5)	NT EPA Recommendation#	Opportunity for improvement (OFI)	Department response
		implementation of the ecotoxicological program, e.g. NT DEPWS and Commonwealth DAWE.	In progress. Departmental business as usual practice for interagency engagement with Northern Territory and Australian government Departments is routinely applied.
OFI-21-DE-REC-07	15.cont.^	Incorporate into DITT processes consultation with other government agencies on the preparation and implementation of the aquatic ecosystem monitoring program, e.g. NT DEPWS and DAWE.	Accepted As above
Bn aOFI-21-DE-REC-08	15.cont.	Incorporate into DITT processes a mechanism for the Operator's three-yearly report on the Aquatic Ecosystem Monitoring Program, and the Independent Monitor's audit of this report, to be made publicly available on DITT website.	Accepted This is consistent with Departmental business as usual practice, following consultation the reports can be made public on either the Department's or operator's website as most appropriate
Human Health			
OFI-21-DE-REC-09	19.cont.^	Update a future Authorisation to include reference to the results of the air quality monitoring plan to be audited by the Independent Monitor every three years	Alternative Implementation Approach While there is not a specific condition in the Authorisation requiring the results relating to air quality (e.g. sulphur dioxide); the Authorisation includes a condition requiring submission of an annual Environmental Mining Report (EMR). It is already accepted and agreed between the Department and the operator that the EMR contents include air quality monitoring results amongst many other parameters. The requirement for the EMR is subject to the audit by the Independent Monitor.

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OFI Ref (Table 4-5)	NT EPA Recommendation#	Opportunity for improvement (OFI)	Department response
			Further, Authorisation conditions are requirements placed on the operator and the OFI proposes the Authorisation requires results of the air quality monitoring plan to be audited by the Independent Monitor every three years. This is not something for the operator to control and would be more appropriately placed in the IM contract scope of works.
Matters of National Environmental Significance			
OFI-21-DE-REC-10	21	Incorporate a requirement into DITT processes to consult other government agencies on the development of non-lethal monitoring program for sawfish monitoring program, including trigger threshold for investigation and management measures, e.g. NT DEPWS and DAWE.	Accepted In progress. The Department engages with Northern Territory and Australian government Departments as required to obtain expert input and comment on matters relating to threatened and or protected species.
Closure and Rehabilitation			
OFI-21-DE-REC-11	23.ii	Incorporate a requirement into DITT processes for the independent panel to review the risk of failure of the mine levee wall and the McArthur River diversion channel as part of the closure plan objectives.	Accepted In progress. Terms of reference for independent expert panels are in preparation and will address this OFI.
OFI-21-DE-REC-12	23.cont.	Incorporate a requirement into DITT processes for the independent panel to provide a 3-5 yearly review report on the mine closure plan to assess the trajectory of closure options to DITT and the Independent Monitor. To subsequently be made	Accepted In progress. Terms of reference for independent expert panels are in preparation and will address

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OFI Ref (Table 4-5)	NT EPA Recommendation <sup>#</sup>	Opportunity for improvement (OFI)	Department response
		available to the Operator, government agencies, CRG and the public.	this OFI. The requirement to make public the reports will be clarified.
Adaptive Management			
OFI-21-DE-REC-13	27	Incorporate into DITT processes a mechanism for the Operator's review and synthesis of all monitoring programs and revised monitoring program to be reviewed by the independent panel(s) and the Independent Monitor, and be approved by the relevant regulators, e.g. DITT.	Accepted In progress. Usual business practice is for Mining Officers to address such matters during the review of environmental mining reports submitted annually in accordance with section 37(e) of the <i>Mining Management Act 2001</i> .
General			
OFI-21-DE-REC-14	N/A	Consider the development of a DITT process or register to assist capturing the NT EPA recommendations details that are not explicitly stated in the Authorisation conditions to ensure implementation of the specific requirements is achieved.	Accepted The Department has a plan of action to implement the aspects of the NT EPA recommendations from Assessment Report 86 requiring action by the Department.

<sup>^</sup> indicates OFI carried over from 2020 NT EPA recommendations compliance audit.

<sup>#</sup> refer to Attachment B for excerpts from relevant NT EPA Recommendations

OFI Ref (Table 4-6)	Opportunity for improvement (OFI)	Department response
OFI-21-DE-REG-01	Prioritise the establishment of the independent panel of experts for TSF and NOEF to trigger and facilitate independent reviews of the Operator's monitoring program and reporting.	Accepted In progress. Terms of reference for independent expert panels are in preparation and will address this OFI.



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OFI Ref (Table 4-6)	Opportunity for improvement (OFI)	Department response
OFI-21-DE-REG-02	Ensure the independent panel(s) terms of reference encompass the appointment of a suitable level expertise and experience if a single independent panel is established to cover both the NOEF and TSF.	Accepted In progress. In progress. Terms of reference for independent expert panels are in preparation and will address this OFI.
OFI-21-DE-REG-03	Create independent panel terms of reference with the flexibility to enable the addition of mine closure expertise to any existing panel, rather than the need to establish a standalone mine closure independent panel	Partially Accepted. The addition of expertise in relation mine closure in Terms of Reference for independent panel for the TSF and NOEF is accepted; however, it should be noted that the NT EPA Recommendation 23 requires a specific panel to review and advise on mine closure.
OFI-21-DE-REG-04^	Facilitate an internal DITT review to examine the annual EMR process, tasks and outputs with a view to streamline the activity. As part of this review, examine what is sufficient for regulatory requirements and responding to community expectations, as well as how the annual process could be more efficient.	Accepted In progress. Annual review is conducted with a view to improving the relevance and focus of the content of the Environmental Mining Report submitted in compliance with section 37(e) of the <i>Mining Management Act 2001</i> and specific to MRM's operation and Authorisation.
OFI-21-DE-REG-05^	Prepare an internal procedure for the regulation of the Authorisation conditions and NT EPA recommendations to document the processes, timing, due dates, overdue submissions, approvals, decisions, public /community communication and records requirements to assist managing the complex regulatory requirements relating to DITT activities.	Accepted In progress. Departmental business practices are subject to regular internal review to achieve efficiencies. The Department will document the procedure to support regulation and compliance activities for all projects subject to Authorisation conditions and NT EPA recommendations.
OFI-21-DE-REG-06	Further streamline the documentation and approval process to improve efficiencies and focus on implementation of initiatives to improve performance.	Accepted In progress. Departmental business practices are subject to regular review to achieve efficiencies

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OFI Ref (Table 4-6)	Opportunity for improvement (OFI)	Department response
OFI-21-DE-REG-07^	Improve communication and collaboration with other government agencies (Commonwealth and NT) to align objectives and actions, streamline processes, and improve environmental outcomes.	<p>Accepted</p> <p>In progress. Departmental business practices are subject to regular review to achieve efficiencies. The Department participates in meetings with other agencies on an as needs basis.</p> <p>Over the past 12 months the Department has been undertaking a streamlining project in relation to mining regulation, and the findings will inform future improvements.</p>
OFI-21-DE-REG-08^	Reduce reliance on key individuals within DITT to ensure consistency and continuity of compliance and performance.	<p>Accepted</p> <p>In progress. Recruitment and retention of suitability qualified Mining Officers is a focus of the Department to achieve effective regulation of all projects authorised under the <i>Mining Management Act 2001</i>.</p>

^ indicates OFI carried over from 2020 NT EPA recommendations compliance audit

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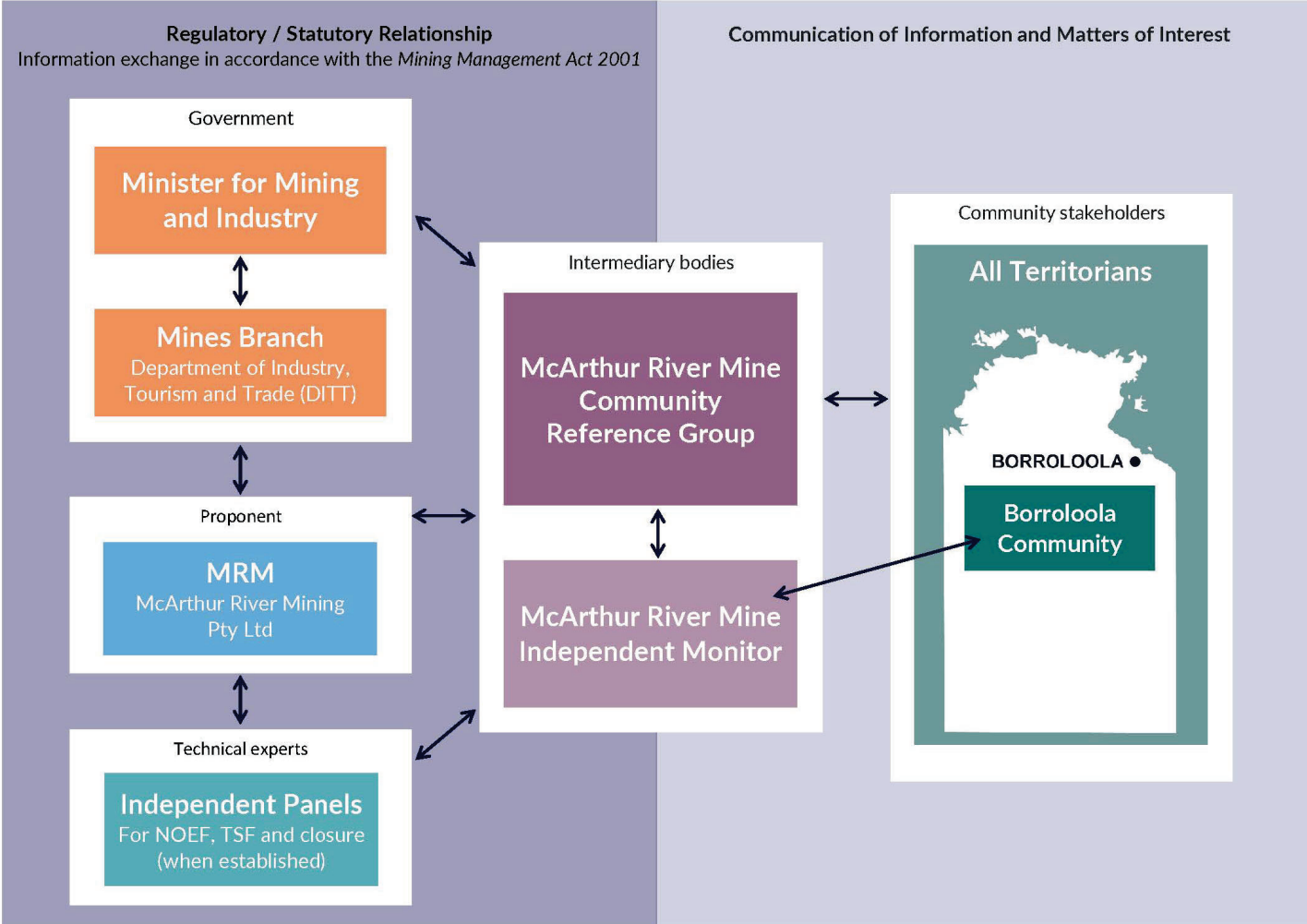


Figure 1: McArthur River Mine Community Reference Group relationships relative to regulatory requirements

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Full Terms of Reference for the MRM Community Reference Group (CRG) are available at:  
[https://industry.nt.gov.au/\\_data/assets/pdf\\_file/0020/1057511/mrm-crg-terms-of-reference.pdf](https://industry.nt.gov.au/_data/assets/pdf_file/0020/1057511/mrm-crg-terms-of-reference.pdf)