

Department of Industry, Tourism and Trade response to the Independent Monitor's Annual Environmental Performance Audit Report 2020

Response Overview

The Department of Industry, Tourism and Trade (the department) administers the *Mining Management Act 2001* on your behalf to minimise the impact to the environment while developing the mineral resources of the Territory for the benefit of all Territorians. It is in this capacity that the department provides this response to the Independent Monitor's findings in relation to the department's performance as the regulator for McArthur River Mine.

The department welcomes the opportunity to respond to the Independent Monitor's 2020 Annual Environmental Performance Audit Report (Audit Report), noting it covers the period from 1 April 2018 through to 30 April 2020. We acknowledge it is the first Independent Monitor report published since the responsible Minister accepted the recommendations of the Northern Territory Environment Protection Authority (NT EPA) assessment of the McArthur River Mine Overburden Management Project (OMP) finalised in July 2018.

It is noteworthy that during the review period (1 April 2018 through to 30 April 2020) the department was required to navigate a complex regulatory environment involving an operating mine subject to assessment under Territory and Commonwealth environment legislation.

During the review period, the department met its administrative requirements assessing no less than six mining management plan amendments under the *Mining Management Act 2001* to facilitate operational continuity at McArthur River Mine and compliance by McArthur River Mining Pty Ltd (MRM) with Territory and Commonwealth statutory obligations.

Further, MRM was subject to regulation under six variations of Authorisation 0059. The audit conducted by the Independent Monitor focused on Authorisation 0059 issued 15 August 2019 as this encompassed the conditions from all previous variations and brought into effect the NT EPA recommendations.

The scope of the Audit Report focussed on the department and operator's compliance against Authorisation 0059 issued under the *Mining Management Act 2001* and Waste Discharge Licence granted under the *Water Act 1992*. The Independent Monitor's Audit Report represents a shift from previous technically-based assessments to an audit against regulatory requirements.

Additionally, the Audit Report presents findings regarding progress made by the department with respect to implementation of the NT EPA recommendations for the OMP and the health of McArthur River in response to stakeholder feedback consistent with recommendations made by the NT EPA.

In summary, the department is pleased with its performance as reported by the Independent Monitor. Key findings of the Independent Monitor's Audit Report with respect to evaluation of the department include:

- No significant environmental issues identified on McArthur River Mine or Bing Bong Loading Facility requiring urgent investigation
- Overall compliance of 97% against 60 active conditions in Authorisation 0059
- Full compliance achieved in four of the six Authorisation sections-General, Waste Rock Management, Water Management and Storage and Overburden Management Project-

with compliance scores of 94% for Environmental and Independent Monitoring and 95% for Tailings Storage Facility

- Attaining a compliance score of 98% with respect to implementation of NT EPA recommendations requiring action by the department.

The high overall compliance score (97%) achieved by the department is evidence the department is regulating the Operator effectively. The Independent Monitor acknowledged that the department appropriately expended public resources in the management of mining activities on the site.

Further, the overall high level of regulatory compliance by both the operator (95%) and the department (97%) supports 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.

The department acknowledges its regulation was found to be partly non-compliant against nine of 157 elements against which compliance was audited. Seven of the nine non-compliances identified by the Independent Monitor sit within the part compliance (high) category, the other two sit within the compliance (moderate) category. The non-compliances are attributable to administrative matters and are considered to represent a low risk to the environment, although action will be taken to address these findings.

Overall the Independent Monitor found 'the McArthur River and its tributaries were considered to be in good health'.

Committed to effective regulation under the *Mining Management Act 2001*, the department provides the following response to the individual opportunities for improvement identified by the MRM Independent Monitor in their Annual Environmental Performance Audit Report 2020.

The table below presents the department's response to the opportunities for improvement identified by the Independent Monitor's assessment of the performance of the regulator against the four aspects audited: Authorisation 0059 (Table 4-3), NT EPA recommendations (Table 4-5) and Regulatory Procedures (Table 4-6) and Regulatory Approach (Table 4-7).

The left hand column is an extract from the *Annual Environmental Performance Audit Report 2020* with the department's response provided in the corresponding right hand column.

Independent Monitor's Opportunity for Improvement		Department's response
Table 4-3: Authorisation – Department opportunities for improvement		
Authorisation Condition (<i>issued 15 August 2019</i>) and Opportunity for Improvement (OFI)		DITT Response
7.g	<p>Mining Management Plan and Reporting</p> <p>Amend the condition to remove the requirement for the Operator to submit water transfer data quarterly given the large amount of data which is provided annually.*</p>	<p>Accepted</p> <p>Condition 7(g) has been retained to maintain continuity during assessment of mining activities proposed in the McArthur River Mine Overburden Management Project (OMP)</p> <p>The department will consider this Independent Monitor identified Opportunity for Improvement in light of the operator demonstrating compliance with the proposed framework and achievement of stated environmental objectives/outcomes</p>
17	<p>Waste Rock Management</p> <p>Improve the wording of the condition related to the alluvium cover placement being required prior to 01 November each year to recognise waste placement occurs all year round and to avoid restricting wet season operational activities unnecessarily.</p>	<p>Accepted and addressed</p> <p>Variations of Authorisation 0059 issued after 30 April 2020 (the end of the audit period) addressed this matter</p> <p>Condition 17 issued on 15 August 2019 was removed and the matter of alluvium cover addressed as prescribed in Condition 51 of Authorisation 0059 issued on 13 November 2020</p> <p>No further action to be taken</p>
48	<p>Tailings Storage Facility</p> <p>Confirm details of the meeting frequency of the ITRB.</p>	<p>Accepted</p> <p>The department will confirm</p>

Independent Monitor's Opportunity for Improvement		Department's response
Table 4-5: NT EPA Recommendations – Department opportunities for improvement		
NT EPA Recommendation		DITT Response
64.b	<p>Environmental Monitoring</p> <p>Confirm that only Electrical Conductivity monitoring is the intent of the condition or specify other parameters required e.g. pH, flow monitoring, etc.</p>	<p>Accepted and addressed</p> <p>Variations of Authorisation 0059 issued subsequent to 30 April 2020 addressed this matter</p> <p>Condition 64(b) issued on 15 August 2019 was amended to read '<i>devices must at a minimum measure electrical conductivity, and may measure additional parameters such as pH</i>' as Condition 2(b) of Schedule D Variation of Authorisation 0059 issued on 13 November 2020</p> <p>No further action to be taken</p>
75.a.ii	<p>Independent Monitoring Assessment Conditions</p> <p>Determine what, if any, environmental assessments and audits of the Operator shall be undertaken by the Department.</p>	<p>Accepted</p> <p>The department is in the process of refining and documenting its site inspection schedule, including audits and other assessments, for McArthur River Mine following the issuing of variation of Authorisation 0059 on 13 November 2020.</p>
Aquatic Ecosystems		
14	<p>Update Authorisation condition 118 to clearly reference "<i>...the results of the (Ecotoxicological) program shall be used to inform trigger criteria in the AMP</i>".</p>	<p>Accepted and addressed</p> <p>Condition 28 of the Authorisation issued 13 November 2020 reflects NT EPA Recommendation 14 addressing the intent. It is the position of the department that the wording at 28(a) '<i>the results of this program must be integrated with other relevant programs and management plans</i>' encapsulates the requirement for the results to inform trigger criteria in the Adaptive Management Plan – generally considered a management plan</p> <p>No further action to be taken</p>

Independent Monitor's Opportunity for Improvement		Department's response
Table 4-5: NT EPA Recommendations – Department opportunities for improvement		
NT EPA Recommendation		DITT Response
14	Develop and document a process for including advice on the preparation and implementation of the Ecotoxicological program from other agencies e.g. DEPWS and Commonwealth Department of Agriculture, Water and the Environment.	<p>Accepted and addressed</p> <p>In accepting the NT EPA Recommendations of Assessment Report 86, the then Minister for Primary Industry and Resources took responsibility for implementing the recommendations that apply under the authority of the <i>Mining Management Act 2001</i></p> <p>No further action to be taken</p>
15.iii	Develop and document a process for including advice on the preparation and implementation of the aquatic ecosystem monitoring program from other agencies e.g. DEPWS and Commonwealth Department of Agriculture, Water and the Environment.	<p>Accepted and addressed</p> <p>The department's Mines Branch administrative procedures have been updated as appropriate to capture such matters</p>
15.iii	Decide on which website key documents are made available. It will be more efficient to have a single master copy on a website document with links to it from other websites (e.g. Departments, Agencies or Operator).	<p>Accepted and addressed</p> <p>The department's website has recently been updated to support the public availability of mining reports in addition to the pre-existing website for previous reports from the Independent Monitor</p> <p>No further action to be taken</p>
Human Health		
19	Update future Authorisation to include reference to the results of the air quality monitoring plan to be audited by the IM every three years or seek agreement in writing between DITT and NT EPA to accept an alternative arrangement.	<p>Accepted</p> <p>The department will consider this Independent Monitor identified Opportunity for Improvement during any future variations to Authorisation 0059</p>

Independent Monitor's Opportunity for Improvement		Department's response
Table 4-5: NT EPA Recommendations – Department opportunities for improvement		
NT EPA Recommendation		DITT Response
20. iii	Obtain agreement with NT Department of Health that the alternative wording used on waterway signage ('prohibited access') at mining lease boundary is acceptable.	<p>Accepted</p> <p>The intent of the NT EPA recommendation has been met by Condition 124 of Variation of Authorisation issued 15 August 2019 as it cross-references Condition 68 which states the operator must erect signage that '<i>contains specific wording agreed to by the Chief Health Officer of the Northern Territory</i>'</p> <p>The department undertakes to confirm appropriateness of wording with the Department of Health</p>
Whole of Environment Considerations		
24	Ensure the independently calculated amount and final amount of the security shall be published on the relevant regulator's website with any variation between the amounts explained.	<p>Requires further consideration</p> <p>Current government policy is to publish the amount approved by the Minister, under the <i>Mining Management Act 2001</i></p>
Table 4-6: Department's regulatory procedures opportunities for improvement		
Key Regulatory Activity Opportunity for Improvement		DITT Response
1	<p>S29 incidents</p> <p>Examine legislation to determine if agreement on a process may allow low risk incidents to be notified and documented in the annual reporting to the Department (i.e. EMR) rather than individually notified under Section 29 procedures.</p>	<p>Accepted</p> <p>This Independent Monitor identified Opportunity for Improvement addresses a policy matter and has implications for all mining operations in the Northern Territory</p> <p>The department is working to reduce inefficiencies and this matter has been identified elsewhere and is under review for appropriate action</p>

Independent Monitor’s Opportunity for Improvement		Department’s response
Table 4-6: Department’s regulatory procedures opportunities for improvement		
Key Regulatory Activity Opportunity for Improvement		DITT Response
2	<p>S29 incidents</p> <p>Develop a trend analysis of Section 29 incidents as an indicator of performance of the Mine (improvement or deterioration).</p>	<p>Accepted</p> <p>This Independent Monitor identified Opportunity for Improvement has been identified by the department as a means to improve regulatory efficiencies and is included in the Mines Branch Business Plan for appropriate action</p>
3	<p>TSF</p> <p>Include and review of “TSF Recommendation, Instruction and Action Register” to document satisfactory progress of actions as part of a review procedure for every TSF quarterly report.</p>	<p>Accepted and addressed in part</p> <p>The department is working with MRM to improve transparency and accountability of reporting and follow-ups</p>
4	<p>TSF</p> <p>Request a copy of the independent TSF annual audit reports for Department records.</p>	<p>Accepted and addressed</p> <p>In February 2021 the department requested copies of the annual audit reports for departmental records</p>
5	<p>TSF</p> <p>Seek agreement with the Operator to re-establish the practice of including the TSF Recommendations, Instruction and Action Register in future TSF Quarterly Reports</p>	<p>Accepted and addressed</p> <p>In January 2020 the department requested TSF Quarterly Reports include TSF Recommendations and an Instruction and Action Register</p> <p>TSF Quarterly Reports received since March 2020 have included TSF Recommendations and Instruction and Action Registers</p>
6	<p>Quarterly monitoring data requirements</p> <p>Train more Department staff in the procedure to upload the quarterly monitoring data received from the Operator.</p>	<p>Accepted</p> <p>This Independent Monitor identified Opportunity for Improvement will be implemented by the department</p>

Independent Monitor's Opportunity for Improvement		Department's response
Table 4-6: Department's regulatory procedures opportunities for improvement		
Key Regulatory Activity Opportunity for Improvement		DITT Response
7	<p>OPR and EMR</p> <p>Discuss with the Operator the potential opportunities and mechanisms to communicate the trends of monitoring data to the public. e.g. via the Community Reference Group once it is established.</p>	<p>Accepted</p> <p>This Independent Monitor identified Opportunity for Improvement will be actioned by the department</p>
8	<p>OPR and EMR</p> <p>Determine how cumulative data and trend analysis may be obtained, analysed and reported. The EMR has not included a cumulative assessment either across time or for Environmental Aspects.</p>	<p>Accepted</p> <p>This Independent Monitor identified Opportunity for Improvement will be actioned by the department</p>
9	<p>OPR and EMR</p> <p>Facilitate an internal Departmental workshop to examine the annual EMR process, tasks and outputs with view to streamlining the activity. It is prudent to have the EMR but it is worth examining what is sufficient for regulatory requirements and to satisfy community expectations, and how the annual process could be more efficient.</p>	<p>Accepted</p> <p>This Independent Monitor identified Opportunity for Improvement will be actioned by the department</p>
10	<p>General</p> <p>Prepare an internal Departmental procedure for the regulation of the Authorisation conditions and NT EPA Recommendations to document the processes, timing, approvals, decisions, public /community communication and records requirements to assist manage the complex regulatory requirements relating to Department activities.</p>	<p>Accepted</p> <p>This Independent Monitor identified Opportunity for Improvement will be addressed by the department</p>

Independent Monitor's Opportunity for Improvement		Department's response
Table 4-7: Department's regulatory approach opportunities for improvement		
Opportunity for Improvement		DITT Response
1	Further streamline the documentation and approval process to improve efficiencies and focus on implementation of initiatives to improve performance	<p>Accepted and addressed in part</p> <p>The request for the operator to prepare a life of mine amended Mining Management Plan incorporating the activities proposed in the Overburden Management Project and its subsequent assessment by the NT EPA goes part way to addressing this Independent Monitor identified Opportunity for Improvement</p> <p>More broadly the department is working with industry to provide contemporary guidance regarding the minimum requirements for mining management plans submitted for approval under the <i>Mining Management Act 2001</i></p> <p>Revised templates and guidance notes have been prepared and released for exploration and extractive minerals projects. Guidance material for mining projects is expected to be released during 2021 following consultation with industry.</p>
2	Develop a working agenda/action list for meetings with Operator to capture and track ideas and actions, including delivery timeframes.	<p>Accepted</p> <p>This Independent Monitor identified Opportunity for Improvement will be addressed by the department</p>
3	Increase time on site to verify evidence of progress and outcomes, as well as work with the Operator to resolve issues.	<p>Accepted</p> <p>This Independent Monitor identified Opportunity for Improvement will be considered by the department in combination with our response to 75.a.ii above</p>

Independent Monitor's Opportunity for Improvement		Department's response
4	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>The department will continue to work with Territory and Commonwealth regulators to maximise regulatory and related administrative efficiencies, to cooperatively improve environmental outcomes</p>
Table 4-7: Department's regulatory approach opportunities for improvement		
Opportunity for Improvement		DITT Response
5	Reduce reliance on key individuals within the Department to ensure consistency and continuity of compliance and performance.	<p>Accepted</p> <p>This Independent Monitor identified Opportunity for Improvement reflects the department's taking action to address a potential business risk warranting a review of staffing and business systems supporting the administration of the <i>Mining Management Act 2001</i></p>