To: Department of Environment, Parks and Water Security; Department of Industry, Tourism and Trade, Northern Territory

Re: Regulation of Mining Activities – Environmental regulatory reform

3 March 2021

Introduction

AMEC appreciates the opportunity to provide a submission to the Northern Territory Government's consultation paper on the Regulation of Mining Activities in the Northern Territory – Environmental Regulatory Reform.

An effective and efficient environmental regulatory framework is critical to the growth and success of the Northern Territory's mineral exploration and mining industry. AMEC appreciated the virtual briefing the Departments delivered to our Northern Territory Advisory Committee on 5 February and welcome further stakeholder workshops between Government and industry as the reforms progress.

About AMEC

The Association of Mining and Exploration Companies (AMEC) is a leading national industry association representing over 350 members from all around Australia. Our members are explorers, emerging miners, producers, and a wide range of businesses working in and for the industry; we have 20 member companies actively exploring, mining, and developing projects in the Northern Territory.

The mining and exploration industry make a critical contribution to the Australian economy, employing over 255,000 people, and in 2018/19 collectively paid over $39 billion in royalties and taxation. In 2019/20 resources companies invested $35 billion in new capital and generated more than $176 billion in mineral exports. $2.8 billion was spent on minerals exploration in 2019/20, representing an 18% increase from the previous year.

In the Northern Territory the mining and mineral exploration industry contributes $4.4B in production and $130M in exploration activity. It employs around 4400 people directly and is the second biggest employer in the Territory following the Government and Defence sector. Nearly 80% of the Territory has not been explored, which presents an enormous unrealised opportunity for future growth.

Consultation Paper

General feedback

AMEC's longstanding objectives, presented to the Northern Territory Government through its Election Policy Platform, Budget Submissions, and various other major submissions, are to:

- Increase economic growth through mineral exploration and mining activity; and
- Reduce the cost of doing business in the Territory.

AMECs members are committed to achieving the highest environmental standards on their projects.

Receiving the necessary environmental approval is the final hurdle for fundraising for many companies and is critical to their success. The timeliness, effectiveness and efficiency of this approval and its associated process is of critical interest to AMEC and its members.

How the Northern Territory chooses to structure the environmental approval process will have a substantial impact on how the mining and mineral exploration sector grows. It is not an overstatement to say that the achievement of the outcomes detailed in the Territory Economic Reconstruction Commission Report will also largely hinge on the efficiencies gained through this reform.

Territory Economic Reconstruction Commission Report

The Territory Economic Reconstruction Commission Report (TERC Report)[1] details an aspiration for the Northern Territory to have a $40B economy by 2030. This will demand a sustained average annual Gross State Product growth rate of 3.9%.

To reach this step change in growth, the Report acknowledges a range of changes that will need to be implemented.

Figure 6: Elements of a bankable investment environment

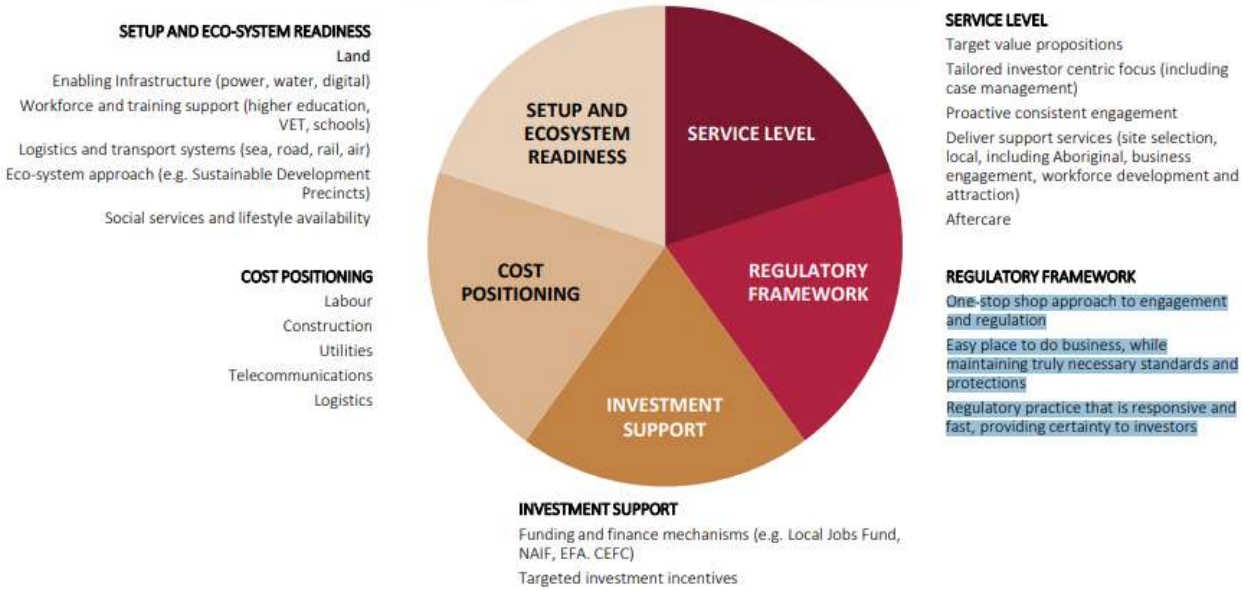

Figure 6, on page 11, is pertinent to this Discussion Paper. The objectives highlighted under "Regulatory Framework" outline what should be the target for the Government through these regulations. As observed in the headline on the following page: "This is not business as usual – it requires a systemic shift in the role of government, from facilitating investment to one of actively pursuing and winning investment for the Territory". As noted on page 14, three mines are expected to close by 2030, and there have been no new mines since 2005.

[1] https://ntrebound.nt.gov.au/__data/assets/pdf_file/0020/952301/terc-final-report.pdf

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There are 17 projects in near term development, valued at about $5.7B in proposed capital expenditure. These projects will create 5700 construction jobs, and up to 3400 operational jobs.

The mining and mineral exploration industry expect to adhere to environmental regulation and to be held to rigorous standards. However, as observed in the Productivity Commissions Report in Resource Regulation, the "cost of delays can dwarf other regulatory costs"[2], with regulator capability[3] cited as a key reason.

Environmental Registration and Licensing Scheme (ERLS)

AMEC is highly supportive of the intended tiered approach to environmental regulation. Requiring a level of detail and management planning commensurate with the risk posed is best practice. As discussed below, risk needs clarity. Simply put, regulation should not occur for the sake of regulation. The outcomes being sought should be considered and identified.

The definition of 'substantial disturbance' is an important factor in determining the impact the proposed changes will have on industry.

It is not uncommon for a mining or exploration project to include exploration for commodities other than that which they already hold approval for, concurrently. Under the proposed new requirements, what will the registration process be in this circumstance? There is concern the requirement to obtain additional licensing and / or registration will be a costly activity, as limited fee details have been provided.

The low-impact notification model[4] out of Western Australia bears consideration for the "Registration and/or the No registration" level. This is something AMEC has successfully advocated for in Western Australia. It will reduce the administrative burden of industry and regulators for activities deemed to pose a minimal risk to the environment, commensurate with the ability to be granted automatic approval. The Northern Territory, and all jurisdictions have limited staff resources, which should be prioritised to higher risk activities with substantial disturbance.

Risk based regulation and the Quinlan Review.

There has been considerable rhetoric between Government and Industry stakeholders about risk-based outcome focussed regulation. However, there does not appear to a common understanding or application of risk-based outcome focussed regulation. This confusion has therefore been translated into the assessment, decision making and compliance processes.

Nationally, this has resulted in the 'likelihood / consequence risk matrix', the ALARP (as low as reasonably practicable') model, and 'hybrid' models being used by regulators, which in some cases might not be fit for purpose or are disproportionate to the actual residual risk or benefit gained. Not

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[2] Pg. 12, Productivity Commission 2020, Resources Sector Regulation, Study Report, Canberra https://www.pc.gov.au/inquiries/completed/resources/report/resources.pdf
[3] Ibid, page 17.
[4] https://www.dmp.wa.gov.au/Documents/Environment/Draft_policy_position_paper-proposed_low_impact_activity_framework_prospecting_and_exploration.pdf

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only does this create confusion in the application and assessment stages it also impacts on condition setting and compliance.

AMEC members have stated that the Territory needs a clear definition on what 'risk-based outcome focussed' regulation means in this context to ensure that a developing culture of risk aversion does not favour a practice of disproportionate over-regulation.

This need for clarity was reinforced in 2016, with the publication of the Independent Legal and Governance Review into Policies and Guidelines for Environmental Impact Assessments under the *Environmental Protection Act 1986* (WA), (the Quinlan Review).

It provided a thorough analysis of Western Australia's Environmental Protection Authority (EPA)'s statutory functions in relation to environmental impact assessments, the framework of policy instruments relating to these functions, and recommendations to improve the fulfilment of duties under the EP Act. Ultimately, the Quinlan Review sought to increase clarity and the transparency of expectations for both Industry and regulators.

A similar review of the Territory's environmental regulation framework would be a lengthy but useful way to address current ineffective or duplicative processes, particularly as the challenging task of delineating environmental and mining regulations begins.

The findings of the Quinlan Review are relevant to the proposed changes in the consultation paper, particularly the following[5]:

- Process content reforms should have an emphasis on clarity and simplicity;
- There should be a clear, hierarchical outline of the policy suite, linking policy instruments to statutory functions and powers undertaken by the regulator; and
- The identification of the key environmental factors and the concrete objectives in relation to their protection, is a matter which ought to be at the apex of the policy structure.

The Territory Government should undertake a similar review, which should provide recommendations to deliver long term improvements to the framework's administration and adoption.

EPBC Review

In 2020 Professor Graeme Samuel undertook the Independent Review of the *Environment Protection and Biodiversity Conservation Act* 1999 (EPBC Act). The Review's final report[6] was published in February 2021, and National Environmental Standards are expected imminently.

It is recommended that the Territory's environmental reform process considers the interaction of new requirements under EPBC with the proposed Territory-specific reforms, before proceeding further.

The report found several duplications between State / Territory and Federal legislation. It would be

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5 thttps://www.epa.wa.gov.au/sites/default/files/EPA%20Legal%20and%20Governance%20Review%20-%20Final%20Report%20-%20Quinlan%20et%20al-170516.pdf

6 https://epbcactreview.environment.gov.au/resources/final-report

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counterintuitive to the intent to streamline processes to unintentionally create an additional layer of complexity and/or duplication.

Public Participation and Transparency

A consequence of the proposal outlined in the Discussion Paper is it will incentivise all projects with a modified or tailored licence to self-refer for an Environmental Impact Assessment. Greater clarity is needed on what those projects will fit within those categories. This proposal threatens to remove the offered certainty and timeliness of statutory processes and opens the process to vexatious claims.

The information in mining environmental applications demands specialist knowledge. It generally requires qualified, certified environmental practitioners to undertake extensive studies and analysis to compile valuable, accurate data. This is not a low-cost exercise.

To be required to publicly publish this information, which is specialist by nature, opens avenues of uncertainty arising from the possible misinterpretation of this specialist information, by parties who do not have the knowledge required to accurately interpret the information, or special interest groups who wish to delay mineral exploration and mining. The current format of data expected by Government does not facilitate easy consumption by an interested, but uneducated member of the public.

In the likely event this requirement is driven through, it will create excess time and financial burdens for companies, who will lose a significant amount of operating expenditure for each day their project is delayed. On average, Australian mineral exploration companies already spend $1M per year on administration, salaries, and other overheads before investing in mineral exploration.

These concerns are similar to concerns about the proposal to increase opportunities for public participation for projects that are not subject to Environmental Impact Assessment (EIA) processes. It is not the majority of the population that will misuse this genuine opportunity to encourage community and industry engagement, but a small group with particular interest to halt, delay or prevent mineral exploration and mining. The lack of certainty for land access in the Territory is currently a major barrier to investment and development; it is further hampered by an opaque legislative environment. Additional layers of complexity should be avoided. In the Territory, there is already an average of a three-to-four year waiting time to access land. Comparatively, in Western Australia, the average wait time is one year (for land with Native Title).

AMEC is supportive of improving the clarity of Government decision making. However, the Annual Report is not considered the best mechanism. A separate report with a view to detailing 'whole of government timeframes should be published. The Government's drive to increase transparency and consistency in the reporting of company information should be applied to their own processes.

Decision Making Timeframes

As previously highlighted, the timeframes for approvals, and uncertainty surrounding the application of these timeframes, is a major cause of uncertainty in the Territory. Under the new regulatory provision, will regulator decision making timeframes be fair and statutory, to provide a needed element of confidence?

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The over-use of stop-the-clock provisions is a pertinent issue that requires addressing by the Government. AMEC recommends that the stop the clock provisions have a timeframe placed on their length of 10 business days that can be renewed at the proponent's request.

It is frequently raised in conversation with multiple jurisdictions that delays are created by the proponent. This may or may not be true, but the improvement of transparency around timeframes will create greater clarity and hopefully lead to future streamlining.

AMEC recommends that the NT Government consider the implementation of the WA Governments Department of Mining, Industry Regulation and Safety's quarterly reporting structure[7]. It could be improved by providing a rationale as to why stop the clock measures are being used.

Third-Party Peer Review Cost Recovery

The proposed requirement for an applicant to meet costs associated with a third-party peer review upon direction from the CEO of the Department, likened to existing arrangements within the EIA process, is not supported by industry.

The proposal went further to state this requirement would be included for all environmental activities regulated under the EP Act. The nature of the information required for submittal to the Department for EIA processes is specialist; it requires suitably qualified and experienced environmental professionals to undertake extensive work. Many mineral exploration companies do not have the capacity to undertake this work internally, so outsource this vital work to environmental consultants, creating further jobs. Each jurisdiction is increasing reliance on the accreditation of consultants to complete this work, in recognition of their specialist skills and knowledge.

Conversely, regulators too, should be suitably qualified and experienced so they can make vital decisions in a time-bound and consistent manner, in-line with Legislative frameworks. Environmental practitioners prepare the required information for assessment by the regulator, who expectantly, should have the expertise to make the decision to permit a project to proceed with or without conditions, or block a proposal, without seeking third-party advice. There is concern that should the proposal proceed, regulators will adopt a very precautionary, risk-averse assessment style, and industry will bear the costs of an increasing number of third-party reviews.

AMEC's submissions in 2020 to the Department's environmental guidance consultation processes all highlighted the need for good quality guidance. With proper guidance materials, industry will be able to provide high quality assessments in line with the regulator's expectations, for simple, consistent, and fair decision-making. It is recommended that rather than imposing further costs on industry, high-quality guidance material is developed collaboratively between the regulator and industry.

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[7] *DMIRS licensing performance*
https://dmp.wa.gov.au/Investors/Approvals-14055.aspx?busselect=3

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Chain of Responsibility

Industry strongly opposes the proposal for the Territory Government to introduce chain of responsibility legislation, where upon direction, a 'related person' of a company in financial difficulty to absorb the burden of the company's rehabilitation requirements.

The scale of petroleum activities far outweighs the financial, physical, and impacts of those relating to mining activities (insert addendum). Mineral exploration and mining companies generally rely on public capital raisings to fund their core activities. They invest to ideally gain a profit; this does not guarantee that they have the financial capacity to absorb financial burdens of other companies.

The introduction of a chain of responsibility would be a significant barrier to investment in the Territory. Should investors be faced with the prospect of possibly being required to financially assume responsibility for issues in the event in the company they have invested in cannot meet its obligations, they are likely to seek investment opportunities in alternate jurisdictions, who can provide long-term investment security. Without investment, mineral exploration and mining projects cannot proceed. As current reserves are exhausted, new ones are required to replenish depleting resources, to continue delivering benefits to the Territory's communities and economy. Measures that restrict the growth and success of the mineral exploration and mining sector, will have a substantial detrimental impact on the Territory and its people.

It is recommended this proposal is removed from the reform package, to prevent these impacts from occurring. If it is to remain, the regulations must clarify a hierarchy of liability to provide transparency for future interpretation.

Aboriginal Cultural Heritage

AMEC has a long-standing objective seeking the increased clarity, certainty, efficiency and effectiveness of native title and cultural heritage processes to:

- ensure fair, equitable and quality negotiated outcomes and benefits for Aboriginal people, governments, and industry;
- reduce delays and costs for all stakeholders;
- provide increased trust, integrity and confidence in decision making; and
- ensure compliance.

These objectives are intended to enhance, and not diminish native title or cultural heritage values.

The application of the *Aboriginal Land Rights Act (Northern Territory) 1976 (Cth)* is unique to the Northern Territory. A concerted effort in the drafting of the proposed regulations to align environmental approvals with Land Council's processes and clearance certificates would lower the cost of doing business and provide greater certainty to proponents. The absence of any commentary on how the Environmental Protection Act interacts with cultural heritage must be clarified.

The proposed regulation of the "cultural and social aspects", which form part of the definition of environment from Section 6 of the Northern Territory Environmental Act need to be explained:

> *Environment means all aspects of the surroundings of humans including physical, biological, economic, cultural, and social aspects.*

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The relationship with local community, and the respect of Aboriginal Cultural Heritage, is of paramount importance for the mining and mineral exploration sector. Further consultation on the intersection of the Environmental Protection Regulations and Aboriginal Cultural heritage is needed.

The NT EPA, DITT and DEPWS do not operate in a vacuum and if an outcome being sought is a faster overall approval structure, must consider the land access requirements and expectations of Aboriginal Freehold in these reforms.

Anticipating duplication between DITT and DEPWS

The separation of environmental management requirements from the mining operations could potentially result in duplication of proposals, approvals, and consultation. For example, are tailings dam stability infrastructure design or an environmental approval? Is slope stability in pits and environmental, infrastructure design or a mine safety consideration. Much of infrastructure design equally minimises the environmental impact.

The development of Administrative memorandum of understanding and regular meetings between DITT and DEPWS must be in place when these amendments are implemented. Duplication and overlap are likely and should be tackled as a priority.

Post-approval approvals

Amendments to approvals following their initial grant operate in many jurisdictions cause considerable frustration due to a lack of timeframes, and clarity of procedure. The identification of approvals timeframes for amendments in the regulations, coupled with future provision of guidance will make the Northern Territory leading practice nationally[8].

Consideration of other Reform processes

There is an abundance of previous Commonwealth, State and Territory reviews and recommended reform processes undertaken that should be considered.

These include:

Review of Approval processes in Western Australia, April 2009

This Western Australian focussed review made 12 recommendations in phase one, and 3 in phase 2. The Government has considered and implemented some of the recommendations, however others remain outstanding and do not appear to be being dealt with by current reform processes.

Productivity Commission Inquiry Report into Major Project Development Assessment Processes, December 2013

The Commission found that there is substantial scope to improve Australia's development assessment and approval regulatory framework. It identified long approval timeframes, conflicting policy objectives, duplicative processes, regulatory uncertainty, inadequate consultation and enforcement and regulatory outcomes falling short of their objectives.

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[8] Section 6.3, Pg. 182, Productivity Commission 2020, Resources Sector Regulation, Study Report, Canberra

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Significantly, the Commission outlined how jurisdictions can establish a 'one project, one assessment, one decision' framework for environmental approvals, through bilateral assessment and approval agreements. It found this would reduce costly duplication between Australian and State and Territory Government processes.

Productivity Commission Inquiry Report into Mineral and Energy Resources, March 2014

The Commission made 22 recommendations in relation to non-financial barriers to exploration.

The Government's interim response indicated that the Commission's report will help advance the red tape reduction programme which aims to reduce unnecessary red tape costs representing approximately $1 billion per year.

Unfortunately, many of the recommendations required the Commonwealth Government to work with the Territory Governments to consider implementation. Each recommendation also had an implementation timeframe.

Despite some follow up consultation by the Government with stakeholders (including AMEC in June 2015) no significant progress appears to have been made.

Senate Red Tape Committee Report – Environmental assessment and approvals, October 2017

The Committee made 15 recommendations, of which several mirror those made by AMEC in its submission. The Government response of July 2018 noted several recommendations and disagreed with some others but did not commit to any actions.

Productivity Commission Review into Resource Sector Regulation 2020

Released by the Commonwealth Productivity Commission on 10 December 2020. It examines regulation of the resources sector nationally, identifying issues and what it considers the leading practice approaches to addressing them. The publication of this report is timely.

Concurrent reform processes are underway nationally which bear consideration, which include:

- National Resources Statement and Taskforce recommendations being managed through the Minister for Resources and Northern Australia,
- Treasury / Cabinet Deregulation Taskforce being managed through the Minister Assisting the Prime Minister,
- Introduction of an Amendment Bill to streamline the *Native Title Act*,
- Implementation of the New South Wales Minerals Strategy,
- Queensland tenure and financial assurance reforms,
- Review of the Queensland *Cultural Heritage Acts*,
- The drafting of guidance following the *Mining Act* reform in South Australia,
- Stronger Partners, Stronger Futures reform process in South Australia,
- Appointment of a Better Regulation and Red Tape Commissioner by the Victorian Government,
- Implementation of the Victorian Mineral Resources Strategy 2018 – 2023,
- Streamline WA initiative,
- Reform of the WA *Aboriginal Heritage Act*,

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- Work health and safety legislation and regulation reforms in WA, and
- The outcomes of the passage of the WA *Environment Protection Act*, which includes certification of environmental practitioners.

Final comment

AMEC welcomes continued opportunities for collaboration with the Departments in the planned systematic expansion and evolution of the Territory's environmental regulatory framework over time. It will be imperative to the current and future growth and success of the Territory's industry, that these reforms are correct, and are not rushed. A welcoming regulatory framework will allow industry to drive the Territory's Rebound.

AMEC requests continued engagement and consultation with the Territory Government as the suite of regulatory reforms progresses, to ensure Industry's unique position is appropriately represented.

The questions supplied at the back of the document are answered individually in the Appendix.

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Consultation questions

1. **Is the approach of imposing general (mining) environmental obligations or duties to provide a 'safety net' and support for the licensing and registration scheme supported? If not, why?**

The setting of objectives is identified by the Commonwealth Government's Productivity Commission as a leading regulatory practice. However, the Productivity Commission references the NOPSEMA[9] and Victorian Earth Resources[10] statement of expectations rather than the style of objectives outlined in the Discussion paper. These documents specify what the respective agency will do and clarify how they will regulate.

It appears that the intent of these "environmental obligations or duties" is to act as a "safety net". A mechanism to catch any activities that may have slipped through the 200+ page environmental legislation. Given the robust consideration of the legislation in 2019, the broad powers it provides, and that each project will be assessed according to its risk profile, AMEC considers the environmental obligations as duplicative and unnecessary.

A further concern with the language used in the Discussion Paper is that the outlined environmental obligations should be equally applied to all industries. The use of the word "mining" in the paper is questioned and has been raised as concern amongst Industry. Land clearing for mining has the same outcome as clearing for tourism, defence, or the agriculture industry. It should be acknowledged that land clearing for mining is a cost and is not a source of additional revenue as for the other industries. The cost provides a substantial disincentive to excess clearing.

The generic wording of the objectives makes it impossible for a proponent to understand the expectations of the regulator. The current wording of the obligations can be subjectively interpreted between proponents which is a concern. AMEC is concerned that the Discussion Paper suggests that these obligations and duties will be enforceable. How will they be enforceable?

The Act provides for 'objectives' to be gazetted by the Minister. This proposed safety net of 'obligations or duties' for mining appears duplicative of those objectives. Are the obligations and the objective synonymous? It is confusing that different words have been chosen if they are the same thing.

AMEC has concerns with the fuzzy wording of the obligations that have been offered:

Minimising environmental impacts, including the generation of wastes and pollution to those necessary for the establishment, operation, and closure of the site

This obligation ignores the final step – the relinquishment of the site back to the Government. The breadth of this obligation covers all subsequent obligations.

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[9] https://www.nopsema.gov.au/assets/Corporate/A548477.pdf
[10] https://earthresources.vic.gov.au/about-us/our-role/earth-resources-regulation

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Minimise requirements for clearing of native vegetation.

What requirements? The Government will specify the clearance requirements and Industry will adhere to them. It is unclear how Industry can achieve a minimisation of the requirements placed upon them.

Prevent land degradation associated with the clearing of native vegetation.

While supported as an objective, it is very specific. What of land degradation caused by other activities?

Design structures in a manner that is commensurate with the surrounding environment to the extent practical.

How is this intended to be enforced? Mine and mineral exploration equipment and structures are designed for safety, efficiency, and effectiveness. Most equipment and structures are standardised so how their design will be "commensurate with the surrounding environment" is difficult to comprehend?

Design, maintain and operate structures (e.g., pits, tailings storage facilities) in a manner that minimises environmental impacts (including amenity impacts)

This is duplicative of the entire purpose of the Act, and it is unclear what value this will add?

Maintain and operate equipment installed at the mine site to a standard conducive to its proper and efficient use to minimise environmental impacts?

The activity undertaken by the equipment and the associated risk should be the focus of the regulation.

The wording of the proposed obligations is a concern. Furthermore, the omission of water and fauna as having their own objectives is surprising. As is the lack of wording around risk-based regulation.

2. What alternatives should be considered?

As stated, environmental obligations should be applied to manage the equivalent impacts equally across all industries. Consideration of the *Environmental Protection Biodiversity Act* and the consequences of the Graeme Samuel Review[11] recommendation is needed. The drafting of the objectives must not impede the implementation of a Commonwealth Government approval bilateral.

At a minimum sharpening the language used so that each obligation is measurable, realistic, and attainable.

To achieve the outcome sought, the Government should consult separately regarding the drafting of clear and precise standardised conditions. Standardised conditions on licences could provide a path forward.

[11] https://epbcactreview.environment.gov.au

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3. **What other general (mining) environmental obligations should be included?**

A difficulty inherent in the chosen approach of specifying environmental obligations is that list will always be non-exhaustive. AMEC recommends that if the Government insist with this approach, which AMEC considers flawed, that the:

- obligations be redrafted as discussed per above.
- Renamed "objectives" so they are consistent with the Act.
- Consideration is given to the Quinlan Review, as detailed in the body of the submission, prior to the implementation of this approach.

4. **Rather than relying on a non-exhaustive list of substantial disturbance activities such as that contained in s.35 of the MMA, should the new framework legislation identify an exhaustive list of non-disturbing activities? This could include, for example, airborne surveys and terrestrial seismic surveys undertaken using existing tracks.**

It is unlikely an exhaustive list can be generated. To seek to do so is also to be prescriptive and may consequentially slow the introduction of technologies that do not appear on the list. It is also the antithesis of a risk-based approach.

It is recommended that instead a minimum threshold of a risk is specified. For example, clearing/disturbance beyond 50Ha on an exploration licence. As discussed, at length, during the drafting of the environmental legislation, the question of what the Northern Territory Government considers a "significant" risk must be answered.

5. **Are there any mining related activities that currently require authorisation and a mining management plan that should not be subject to the new framework?**

Unfortunately, the Discussion Paper provides insufficient detail or clarity in the framework to form an opinion. The structure of the model on page 10 is supported in theory by AMEC, however greater detail of where the boundaries are between no registration required, registration, modified licence to tailor licence is needed.

AMEC would suggest that rock chipping, airborne surveys, electromagnetic survey activities and geological reconnaissance are considered under the "no registration "category.

AMEC would suggest that the proposed Western Australian Low Impact Notification model be considered for application in the Northern Territory as "registration". The draft guidance is available online[12]. It is accepted that a tailored licence is needed for a mining operation.

6. **Are there mining related activities that are not currently required to be authorised that should be under these reforms?**

No, but the lack of clarity in the Discussion Paper regarding the proposed framework makes it difficult to be definitive. AMEC requests further consultation on how this model is implemented.

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[12] https://www.dmp.wa.gov.au/Documents/Environment/Draft_policy_position_paper-proposed_low_impact_activity_framework_prospecting_and_exploration.pdf

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7. Under what other conditions should the CEO be able to amend the conditions of a licence?

Mining requires a substantial investment of capital that is done on the understanding that a return will be made commensurate to the risk taken. Risks include the fickleness of global commodity prices, the complexities of geology, and the costliness of doing business. Unless an economically viable return can be made, a mine will not operate.

Introducing an ability to change conditions on a licence potentially adds sovereign risk to the disincentives to invest in the Territory.

The environmental conditions are crucial for the decision making of companies when allocating risk capital. Certainty is needed when making an investment, certainty that conditions are set and will not be altered arbitrarily. This section does not clearly identify thresholds of when activities will be considered to alter conditions.

If conditions are to be changed, then permission to do so should be granted by the proponent to do so through meaningful consultation. The Government should not be allowed to change conditions ("shift the goal posts") on a project without following a prescribed process in good faith. There may arise a rare occasion when a proponent will ask for a condition to be changed, there should be a carefully prescribed and robust process for this.

It is the understanding of Industry, and AMEC, that a projects initial environmental conditions will be set following a rigorous, collaborative, detailed and exhaustive environmental approvals process. Conditions must be specific, measurable, achievable, realistic and have a time horizon or outcome attached to them. A clear process is needed to set the conditions for operation and detail the outcomes that the Government wants the proponent to achieve in order to relinquish the site appropriately rehabilitated.

8. What protections could be included in the legislation to ensure peer review powers are only used when required to ensure that the licencing process provides the necessary environmental protections and meets the objectives of the EP Act?

A concern is that the ability to peer review will be used excessively, externalise decision making and starve internal expertise. This will increase the cost of doing business in the Territory.

All peer review requests should require a clearly specified scope of works that detail expectations, costs, and outcomes. This scope of works should be published and publicly available.

The CEO must be required to sign off on each peer review request.

A formal tender process should be followed to create a pool of practitioners that are appropriate. A potential concern is the number of correctly qualified and experienced practitioners that do not suffer a perceived conflict of interest. It will be important to develop a panel of practitioners before there is a need to identify a peer review practitioner for a project. This will reduce potential time lags.

A register should be maintained and publicly available of the panel of peer review approved practitioners.

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There must be a requirement for the CEO to annually publish the amount paid, to whom, a justification of the decision, a declaration by the CEO of no conflicts of interest, and specifically why the Department could not internally do the work. This reporting will increase transparency.

This process would be facilitated by the progression of the certification process that was created in the Environmental legislative reform.

9. What information or assistance could you provide to enable administrative guidance that supports a "prepare once, use many" approach to peer review documents to be developed?

If a request for a peer review occurs than the proponent should reasonably expect that the data or report created will be suitable for all decision making about the related topic (for example a fauna survey). Further research should not be required, and the scope of work should be sufficient for all conditioning etc in the future.

There is a very real risk of "gold plating" with excessive testing or surveying being sought. To that end the proponent must maintain a right to refuse the request.

The South Australian Productivity Commission undertook an inquiry in 2019 to assess the efficiency and effectiveness of the South Australian Government procurement processes and practices. The Final Report[13]

It is important that all data received from commissioned peer reviewed reports and surveys are made publicly available. The commercial sensitivity of data must be considered, and AMEC recommends consideration of the methodology successfully applied by the NT Geological Survey for managing drill core samples. Two salient features should be replicated: the standardised format of data received[14]; and the commercial confidentiality period[15]. The standardisation of data is critical for the future use of the data, ensuring that all environmental data is received is important. The Commonwealth Government's Productivity Commission found that the failure to provide underlying data sets limits the value for assessment, approval, and monitoring[16]. This was reinforced by the Graeme Samuel Review which found that fragmented, inaccessible environmental data caused "suboptimal decision making, inefficiency and additional cost for business and poor transparency for the community"[17].

The commercial confidentiality period, which maintains the confidentiality of data for a defined period before it becomes publicly available is critical. This model underpins the incredible success of the Northern Territory Geological Survey, and their core libraries. However, unlike the core library, which

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[13] https://www.sapc.sa.gov.au/__data/assets/pdf_file/0006/109392/Government-Procurement-Inquiry-Stage-1-Final-Report.pdf
[14] https://nt.gov.au/__data/assets/pdf_file/0004/203269/geological-sample-submission-procedure.pdf
[15] Pg. 10, https://nt.gov.au/__data/assets/pdf_file/0003/203493/guideline-7-reporting-on-mineral-titles-mineral-reporting-template.pdf
[16] Pg. 368-369, Productivity Commission 2020, Resources Sector Regulation, Study Report, Canberra. https://www.pc.gov.au/inquiries/completed/resources/report/resources.pdf
[17] pg. 71 Samuel, G 2020, Independent Review of the EPBC Act – Final Report, Department of Agriculture, Water and the Environment, Canberra, October. CC BY 4.0. https://epbcactreview.environment.gov.au/resources/final-report

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is curated, the nature of biological and environmental data means that all data should be encapsulated. Consideration should be given to the Western Australian Index of Biodiversity Surveys for Assessments[18] (IBSA). All data associated with land-based biodiversity survey reports submitted to the WA Department of Water and Environmental Regulation (DWER), the Environmental Protection Authority (EPA) and the Department of Mines, Industry Regulation and Safety (DMIRS) under the Western Australian Environmental Protection Act are required to be submitted to IBSA.

This includes surveys conducted for assessment and post-assessment processes for significant and strategic proposals, schemes and scheme amendments, native vegetation clearing permits and works approvals and licences. In the medium to long term, IBSA will provide WA with an exponential return. The Territory could implement the same, even if it is only collecting the data in a standardised digital format and the computer front end is developed (and funded) later.

The drafting of these regulations provides the NT with an opportunity to ensure that the raw data received is completely publicly accessible and that the intellectual property is not retained by the consultant. It is critically important that a future draft of the regulations distinctly address the matter of intellectual property.

10. Are there any compliance and enforcement tools not currently available in the EP Act or the MMA that should be included as part of these reforms?

No. The Minister and the Department already have substantial latitude in the current drafting of the legislative framework. The provision of greater powers is no substitute for the careful drafting of conditions, collaborative engagement with Industry and the performance of inspections.

11. What improvements to the mining authorisation process do you consider would improve efficiency and effectiveness?

There are several areas of improvement:

- A Whole of Government timeframes should be identified and specified, i.e., from receipt of application to deliver of authorisation.
- The proposal to move environmental approval will reduce the Mine Management Plan (MMP). Moving substantial content to the environmental report, will leave licencing for only certain activities.
- Allow parallel processing. Surely parts of the process can occur concurrently.
- A single portal, inbox for each project to ensure that the data is kept in one place.
- The MMP Exploration should be approved by exception through an automated system. Rather than reinventing a new process, the Western Australian model of a “programme of works” should be adopted.

Attached in the Appendix B is a flow chart of the current approvals process for a mineral exploration project through to development to relinquishment. This process usually takes over a decade, and

[18] https://www.wa.gov.au/service/environment/environmental-impact-assessment/program-index-of-biodiversity-surveys-assessments

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rarely will a single approvals officer or a department have oversight of the entire process. This fifteen-page document was developed by DITT in consultation with AMEC and should be included in this discussion.

12. How can the mining securities framework be improved?

The duplication of Mining Remediation Fund levy, bonding, and now the proposed residual risk payment, are duplicative and are disincentives for investment in the Northern Territory. The mine securities framework can be improved by consolidated on the levies. The Discussion Paper does focus on Industry reporting, but improvements to Government reporting are needed.

A proponent needs a pathway to be allowed to surrender a site without facing ongoing liability for genuinely unforeseen problems. The definition of what an unforeseen problem can be discussed, but there must be a demarcation of where a company's liability ceases.

The Mining Management Act is silent on the treatment of the accrued interest from industry's contribution to the Mining Remediation Fund. AMEC contends that the interest should not be skimmed by NT Treasury and should be allowed to accumulate. This will allow in the long term for the MRF to achieve better outcomes. The current wording of Section 46B of the Mine Management Act could be interpreted as providing for the inclusion of the interest:

> 46B Purpose of the Fund
>
> (1) The purpose of the Fund is to hold money in trust to be used by the Agency in connection with minimising or rectifying the environmental harm caused by unsecured mining activities.

AMEC has already provided a detailed submission on how to improve the Mining Remediation Fund, which we have attached as Appendix C.

13. How can the management of mining securities be improved to provide greater incentives and reward progressive rehabilitation?

The NT Government must hand back some of the bond held for a tenement to the proponent for companies to believe that the progressive rehabilitation system works.

The provision of detailed guidance of how a company should report and evidence progressive rehabilitation to recoup the respective bond amount is needed. Logically, an audit process needs to also occur to ensure the rehabilitation is to a standard.

Some companies may have already undertaken progressive rehabilitation and provision should be made for them to recoup their bond immediately.

14. What improvements could be made to the calculation of mining securities to better address potential environmental risks and impacts.

Queensland, New South Wales, Victoria, and South Australia have and are undertaking distinct and extensive consultations on the issue of financial assurance and the calculation of mine securities. These are multiple year endeavours that have engaged both Treasury and the respective Departments. AMEC requests further information and separate consultation prior to implementation of any reform in this area.

15. What other matters would you like to see considered a part of are view of mining security assessment?

Two things to be considered:

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- The effectiveness of a triplicate of fees on industry for similar outcomes: bonds, a Mining Remediation Levy, and the proposed residual risk payment;
- The current quantum of bonds held.

16. Should mining operators have standing to seek a merits review of the proposed environmental and/or infrastructure security? Why?

A mining operator should have standing as the proponent. It is 'natural justice' that a proponent is able to put their case to the discussion of a mine security.

There is substantial concern within Industry that the Northern Territory Civil and Administrative Tribunal (NTCAT) is the inappropriate court for the review of environmental decisions.

As the NTCAT website states in its About section, *"NTCAT is much less formal than a court and its procedures are less complicated. Lawyers are permitted in most cases but usually are not necessary."*[19]

For the review of a decision on projects that are measured in the tens of millions of dollars, which are likely to hinge on the interpretation of complex scientific evidence, this is not the appropriate Court.

AMEC recommends the Supreme Court as being the appropriate Court for the review of Decisions.

17. How should care and maintenance be defined?

To enter 'care and maintenance' is a decision by a company to pause mining production for an undefined period. There is an expectation to restart mining once conditions improve, and the tenement holder will not have declared their intent to close the mine. Production will pause for a combination of various technical, financial, commodity price, or even (rarely) geological complexities. AMEC considers that the legal obligations on the tenement holder should remain unchanged during this period.

18. What other mechanism could be adopted to improve the management of environmental impacts during care and maintenance period?

The commitments made by a proponent, which have subsequently been imposed as conditions on the relevant tenement/s, should apply regardless of whether a mine is in care and maintenance or in operation. If the conditions are not complied with, it may put the tenement/s at risk of breach and ultimately forfeiture.

No further regulatory mechanisms are needed to manage environmental impacts. The continuance of the conditions imposed at the beginning of the operation will increase certainty and transparency.

A company has one set of environmental conditions to comply with and must achieve those standards. It does not make sense to introduce a new administrative process for care and maintenance, beyond a notification that mining operation will be temporarily ceased.

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[19] https://ntcat.nt.gov.au/about-us (Accessed 22.02.2021)

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It has been noted in Industry, that most mines can be economically constrained rather than geologically constrained. This is demonstrated through mines have multiple lives with different companies over many decades.

19. Should the legislation impose a time limitation on how long a site can remain in 'care and maintenance'? If so, what period may be appropriate?

The mineral resources of the Northern Territory are constitutionally the property of the community. It is critical to ensuring the future value of the assets that these assets are not sterilised. In all likelihood, some potentially commercial resource will remain once a mine is in care and maintenance, awaiting a given price or cost condition. Globally, gold and nickel mines go through cycles of mining and suspension. The gold commodity price cycle can be period of 10 years or more. Ultimately, it is the Territory's environmental interest, that an incremental increase in existing development and disturbance on an existing project should be encouraged over new disturbance.

Other jurisdictions have different methodologies for implementing care and maintenance:

- Western Australia

  A retention licence may be granted in respect of the whole or any part of land within the boundaries of a primary tenement/s. It has no maximum area, but the term cannot exceed five years and provides an option to renew for further periods not exceeding five years. After ten years the retention licence is revoked and the tenure forfeit. The company will usually move back to a Mining Lease prior to that deadline. Shifting a project to a retention licence is attractive because the rent is lower and the expectations regarding mineral exploration and production are curtailed. Environmental obligations and EPA conditions remain in force.
- South Australia

  The recent Mining Act amendments include provisions for a retention lease. The Government will be consulting on the form of these leases later in 2021.

The adoption of a different type of tenure such as a "retention lease" should be considered as an avenue to facilitate care and maintenance.

20. What, if any, standard obligations for environmental management during care and maintenance periods should be incorporated into the EP Act.

As answered in Question 18: no further environmental obligations should be imposed. A company should be expected to meet and report on the environmental conditions under which the mining lease originally granted. Introducing new or further standards is not best practice.

Engaging compliance officers to undertake inspections so that existing conditions are met will lead to better outcomes than employing new approvals officers to ensure the documentation submitted is appropriate.

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21. In addition to the proposals contained in this paper, what other mechanisms could the Territory introduce to minimise the potential for legacy sites to be created in the future?

Minimising legacy sites is in both the Industry and the Government's best interest. The Government already has the tools to minimise the tools to potential for legacy sites, but it is the application of the tools that will determine the minimisation.

22. In what ways can industry be encouraged and supported to play a larger role in undertaking remediation works on legacy sites?

The current definition of "unsecured mining activity", absolves existing tenement holders of responsibility for unremediated issues. AMEC does not support a change to this definition as the financial liability for companies is too high.

However, the tenement holder is better placed than the Government to remediate legacy sites (unsecured mining activities) that occur on their tenement. A reduction in the Mining Remediation Fund levy would seem the most linear and logical incentive. The MRF levy exists to raise funds to fix legacy sites, if a company is undertaking activities that reduce the number of unsecured mining activities in the Territory, they should be rewarded for doing so.

A potential hurdle is that many unsecured mining activities are deliberately excised from tenements due to a reasonable fear that the proponent may be held to account for the previous poor performance of a company. As a result, despite being adjacent to an unsecured mining activity, a company will not have legal right of access to remediate it.

The option would require transparent reporting and accounting for expenditure. Auditing of performance of remediation would also be necessary.

23. In what ways could the management and administration of land access arrangements be improved for both mineral titles holders and affected landholders or leaseholders?

Mineral Title leaseholders, and all other leaseholders, should be treated equitably by the Government. The current system, by and large, is considered to work, with compensation limited to making good to rectify damage or disturbance to commercial activities.

The Minerals Title leaseholder rights are, not legislatively at least, secondary to any other leaseholder in the Territory. We consider they should be treated accordingly. Mineral exploration companies have a relatively small impact on the ground than other forms of leaseholder, occur over a shorter timeframe and have more rigorous environmental standards applied.

The vast majority of mineral exploration companies has cordial relationships with other leaseholders.

AMEC is concerned that mineral exploration companies will be leveraged as a supplementary source of income, with the ability to withhold a grant of access being used to veto mineral exploration.

A further concern that has emerged is that fossickers are confused for mineral exploration companies. Fossickers should be expected to meet the standards of mineral exploration companies. A further source of concern is that oil exploration companies, which have larger bank balances and larger, deeper drill programmes are confused with mineral explorers frequently as well. Despite being

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managed by the same department and being broadly defined as resources together – mineral exploration and oil exploration are substantially different.

Finally, questions of the legality of the Land Access Assessment Panel have been subject to substantial discussion in Industry. AMEC strongly recommends that DEPWS seek legal advice regarding the LAAP.

Land access is the number one issue nationally for mineral exploration companies. The treatment, and speed, of land access will determine in part of the attractiveness of investment in the Territory.

24. How would the proposed transitional arrangements affect your mining activity?

In all likelihood, the transition to a new environmental system will introduce regulatory uncertainty and delay investment, unless the new system creates a recognisably faster and improved outcome. There are concerns that the new requirements will change the cost profile of existing operations, and that there will be delays in the reissuing of a lease.

The provision of further clear information and appropriately skilled staffing will reduce these fears.

It is questioned why this transition needs to occur within the next 12 months, when a longer transition would be beneficial with a voluntary uptake period.

25. What improvements could be made to the proposed transitional arrangements to facilitate the transfer of projects into the new system in a timely, staged, and efficient manner?

The transition for applicants to the new system is smooth and could be done within 12-18 months. For existing operations, it is a lot more complex. Many operations have been financially structured around the agreement they reached with the Government on environmental conditions. Given that there are nine operating mines in the Territory, grandfathering existing operations would be easiest. Particularly as three of the largest operations are expected to conclude within the next 8 years.

26. For each type of mining activity – exploration, extraction, and mining operations – what would be an appropriate timeframe in which to require the activity to obtain an environmental registration or licence?

In Western Australia, a programme of works is the environmental approval for a drilling activity, in the September quarter 2021 granted 98% of the time in 15 days[20]. An exploration licence has a 65-business day performance target. Of the 420 exploration licence applications finalised in the September 2020 quarter, again, 99% were within the performance target.

The Low Impact Notification model discussed in the body of the submission is being proposed for implementation in Western Australia following the March 2021 State Election. The use of a notification system will allow the NT Government to streamline approvals for low risk, low impact activities that would, in all likelihood, receive an approval (but with a delay), and instead focus resources on higher risk, high impact activities.

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Key Approval Processes	Target Timeline (Business Days)
Prospecting Licence	65
Exploration Licence	65
Mining Lease	65
Miscellaneous Licence and other tenure	65
Mining Proposal	30
Programme of Work	15
Project Management Plan	30
Radiation Management Plan	30
Petroleum Exploration Permit	120
Petroleum Pipeline Licence	90
Petroleum Production Licence	120
Petroleum survey	40
Petroleum well	40
Petroleum Environment Plan	30 calendar days
Petroleum Safety Case/SMS (new)	90 calendar days
Petroleum Safety Case/SMS (revised)	30 calendar days
Native Vegetation Clearing Permit	60 calendar days

Note: DMIRS assesses and makes decisions on resource sector native vegetation clearing permit applications under a delegation from the CEO under the WA *Environmental Protection Act 1986*. The delegation has been in effect since 1 July 2005. The DMIRS native vegetation clearing permit target is to finalise 80 per cent of applications within 60 calendar days.

27. Are the proposed arrangements for non-finalised processes appropriate? If not, what alternative processes should be considered?

Shifting the legislative requirements on mining proposals that are currently in the midst of the environmental approvals process is inequitable. This will be particularly galling for the projects that entered the process prior to the environmental legislative reform began. It will mean that the Government will have wasted companies' investment in seeking approval. A company should be provided with an option to choose, but not be obliged to enter the new arrangements.

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28. What arrangements would you propose for operators that wish to transfer the mining activity?

If a company wishes to transfer immediately to the new system, there should be a process for them to apply to the Department for reassessment. This will depend on the staffing resources the Department is willing to implement to this process.

For a company to decide whether this is in their commercial interest, the Government needs to provide further information and guidance.

29. What elements would you like to see included in a residual risk framework?

Consultation on what is the proposed methodology, calculation, minimum thresholds, review mechanisms, evidentiary provisions, and processes to guarantee the independence of the calculation. Clarification of the definition of what is considered a "risk", and locations of higher or lower risk will be necessary. Certainty will be needed as to how the Government will hold the funds to pay for a residual risk, and ensure they are available. A discussion as to whether financial instruments would be considered in lieu of cash. Transparency and reporting requirements will also need to be identified. Ensuring it is underpinned by a legally robust process that absolves a company of 'the chain of responsibility' or any other legal recourse once this payment has been made. Finally, given the complexities of the interaction of Territory legislation with the *Aboriginal Land Rights Act 1976 (Cth)*, providing clarity that a residual risk payment applies for ALRA land too.

30. Are there specific matters that should be considered as part of developing a residual risk framework applicable to mining activities?

No other jurisdiction in Australia has implemented a residual risk framework. While South Australia and Queensland are both currently exploring the concept, there are no other Australian jurisdictions to compare against.

The structuring of a residual risk policy needs to be extremely carefully drafted as it is likely to be legal challenged. The definition of what is included, and what is not included, needs to be consulted upon separately. A clear and robust process and methodology of calculation needs to be developed.

If a residual risk is "the risk remaining after risk treatment" it must have boundaries. There has to some degree of risk that is tolerable. In the natural, un-mined environment there exists inherent risk(s) that may occur. A zero-risk environment is not natural.

31. What benefits might there be to applying chain of responsibility laws to mining and other environmental impacting activities.

Implementing chain of responsibility laws will have a negative effect on the joint venture structure frequently adopted in mining and mineral exploration. A joint venture can take many forms. A common type is a "farm in" that gives of an ownership interest in the principal mining company's project, subject to the farm-in party achieving certain expenditure commitments over an agreed period of time.

AMEC considers that a hierarchy of liability starting with the environmental approved holder or alleged transgressor (and if there is more than one holder, in the proportions of their holdings) as the first in

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the hierarchy of liability is more appropriate. The current wording of the legislation provides no direction over who is liable and in what sequence to implement accountability.

A 'Hierarchy of liability' is found within the *Contaminated Land Management Act 1997 (NSW)* and Queensland's *Environmental Protection Act 1994 (Qld)*. Both operate on the "polluter pays" principle, but the hierarchy is provided to delineate who is accountable after the polluter. This delineation will provide clarity to the operation for future legal action but will also provide transparency to the businesses as to how to structure their finances.

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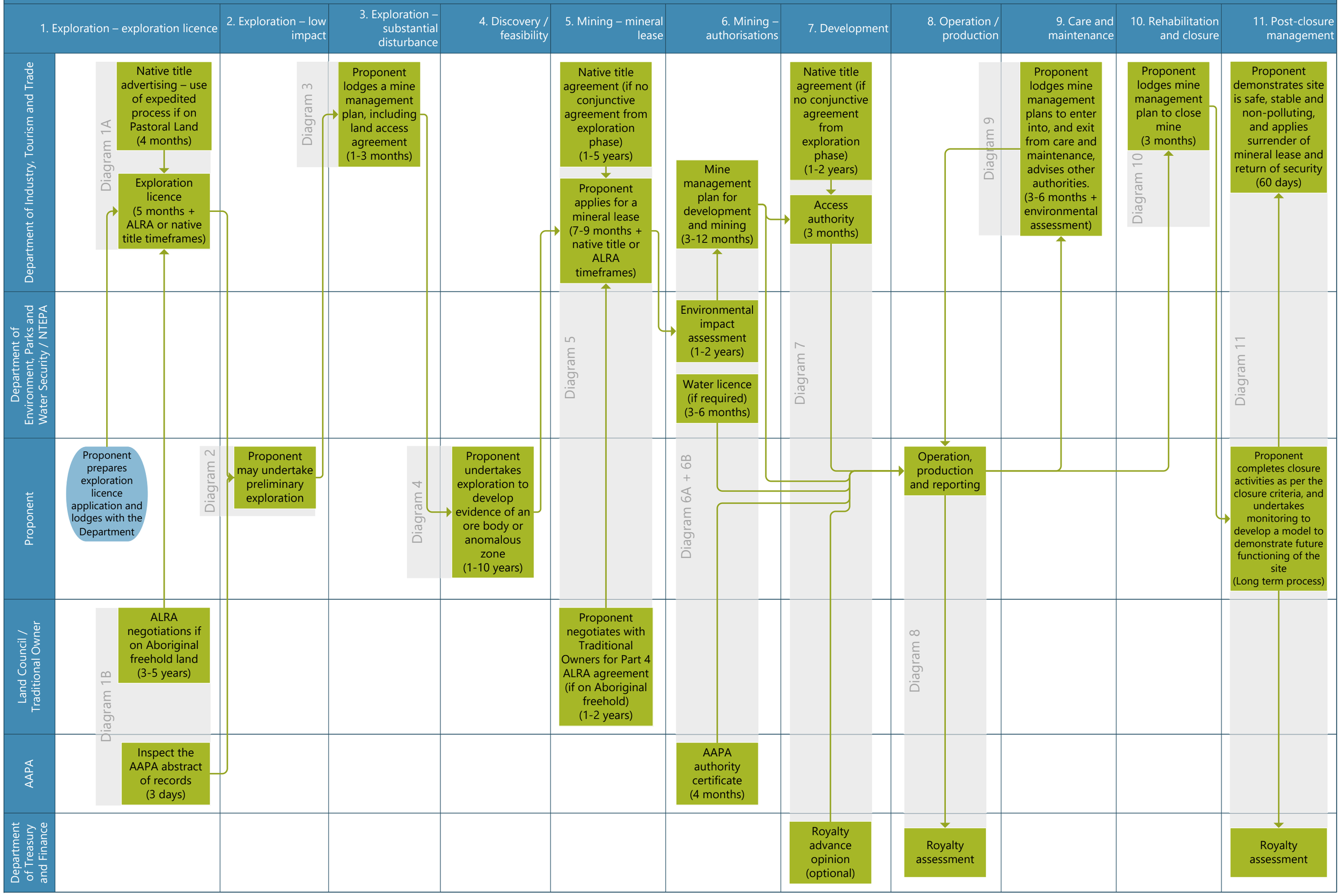
Mineral Processes in the Northern Territory

Version : 28 September 2020



Mineral Processes in the Northern Territory

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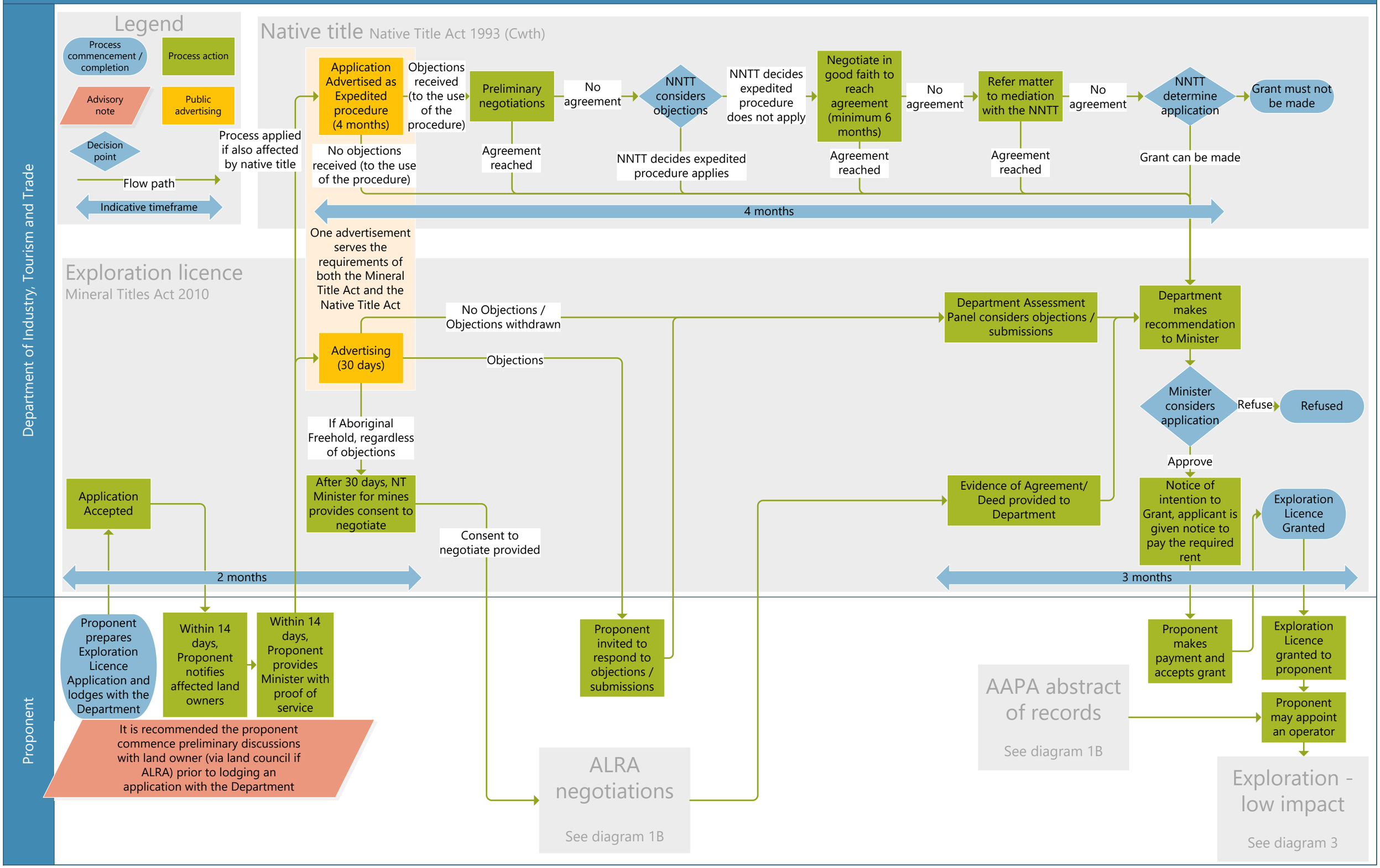
Diagram 1A: Exploration – exploration licence



Mineral Processes in the Northern Territory

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Diagram 1B: Exploration – exploration licence

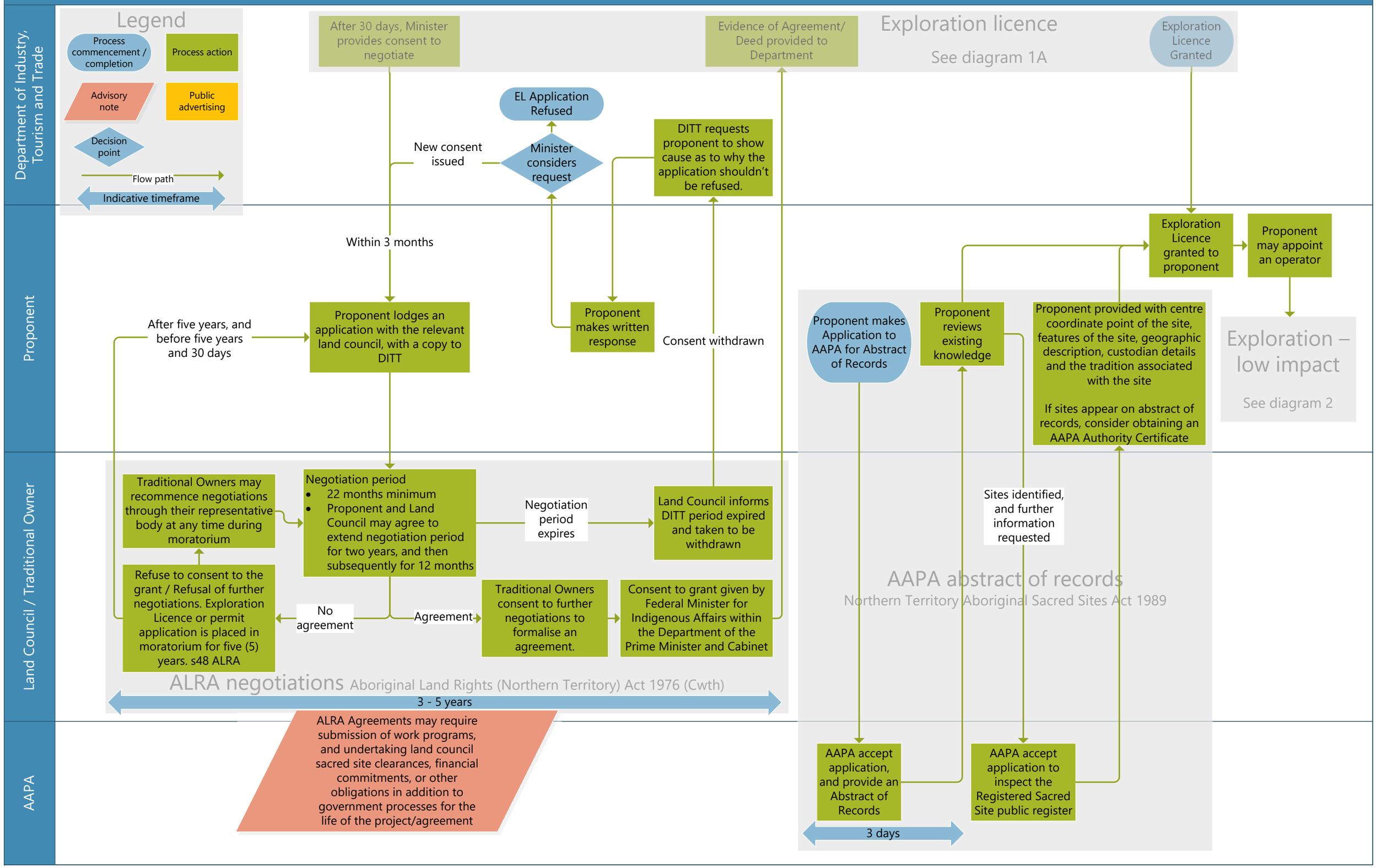
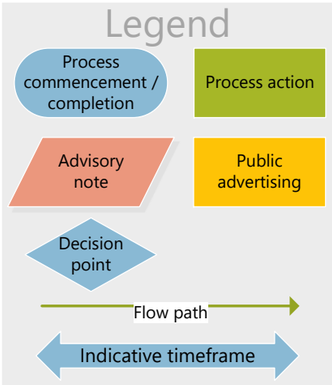


Diagram 2: Exploration – low impact

Proponent



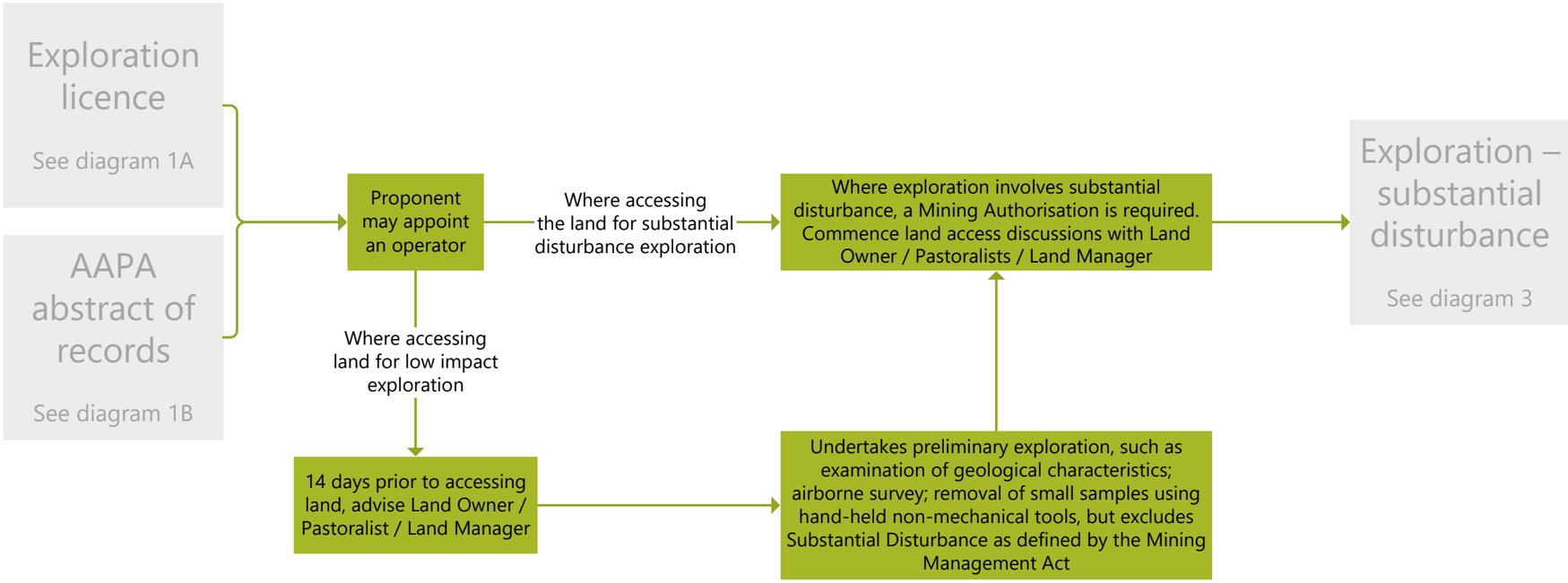


Diagram 3: Exploration – substantial disturbance

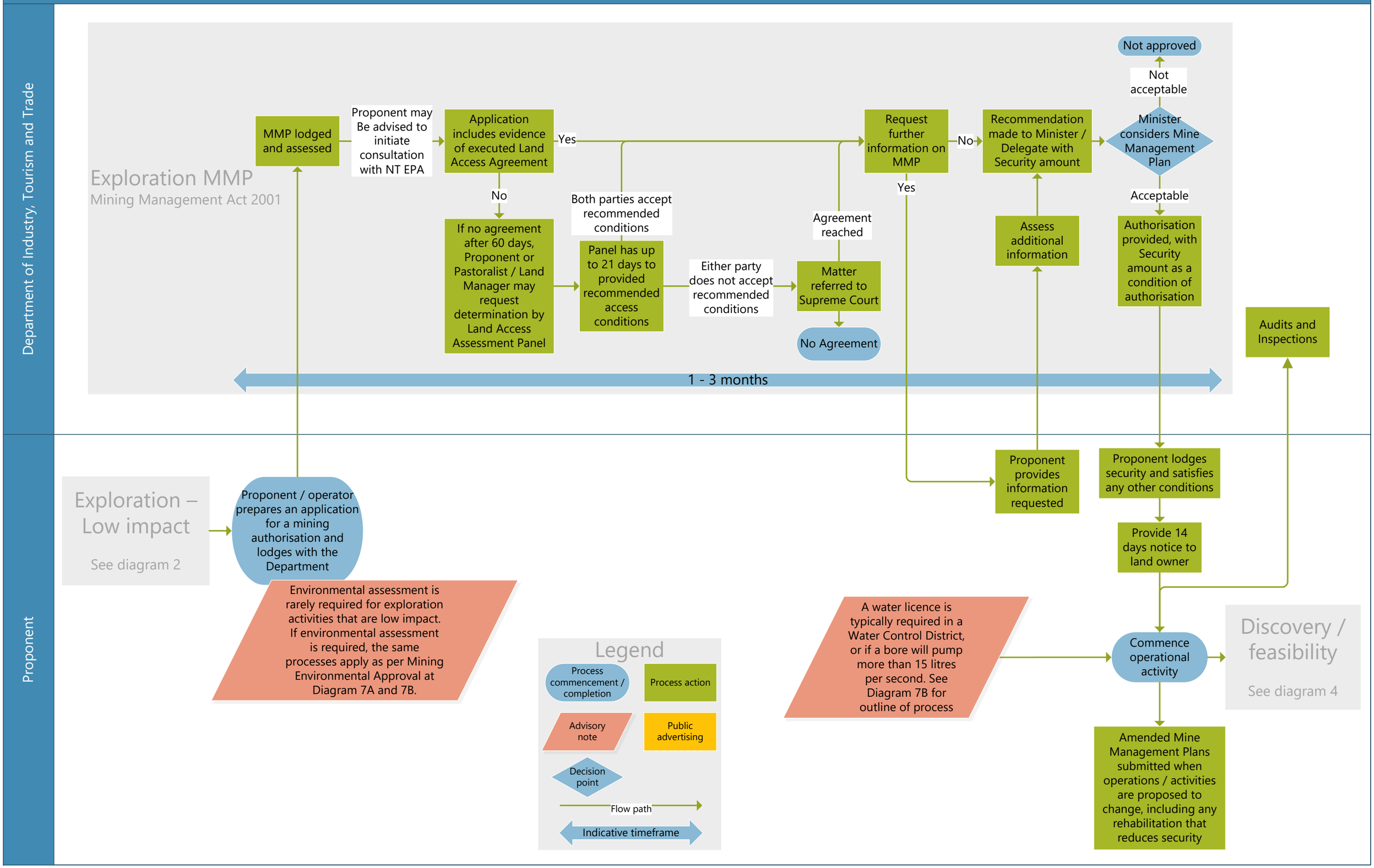


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Diagram 4: Discovery / feasibility

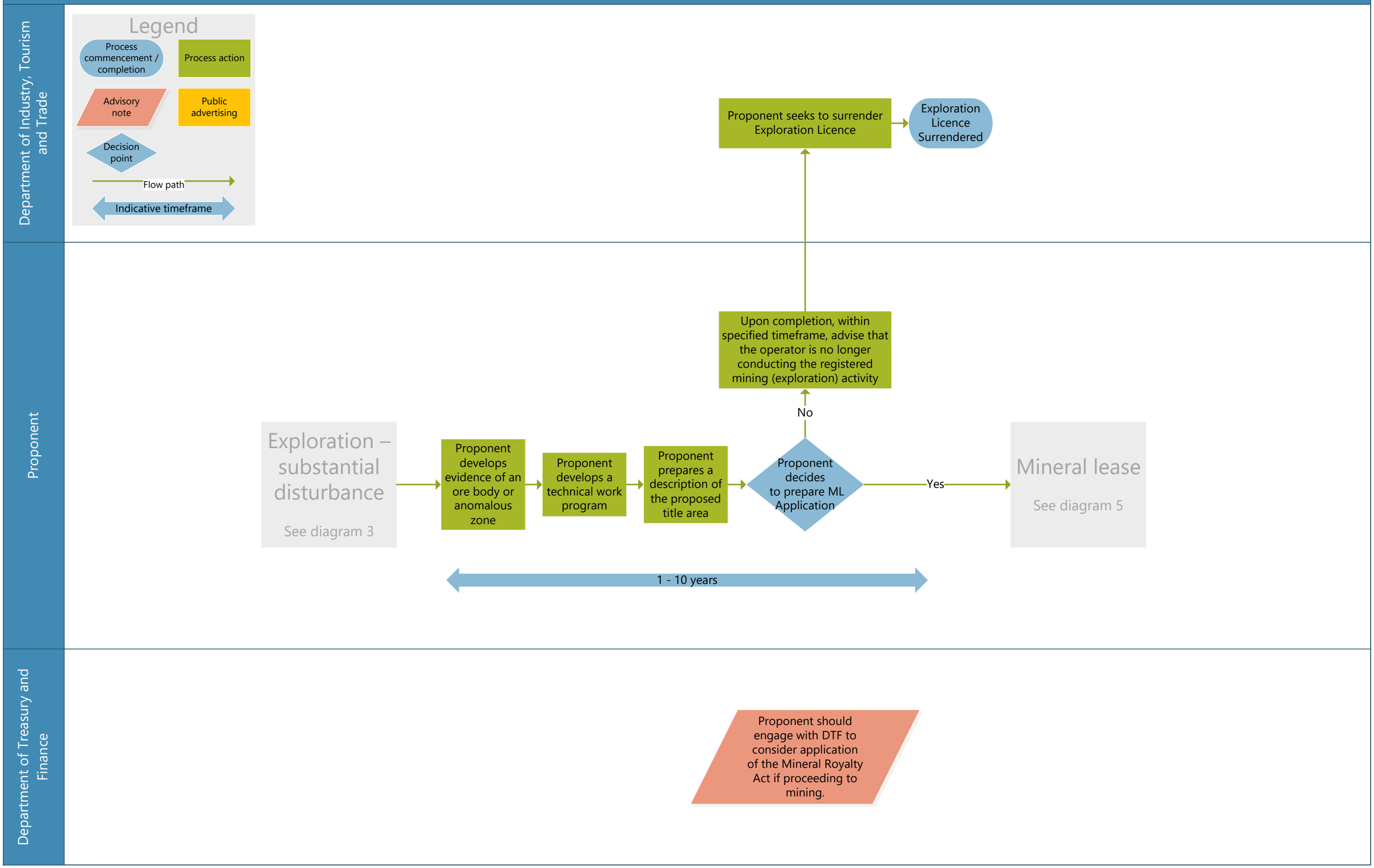

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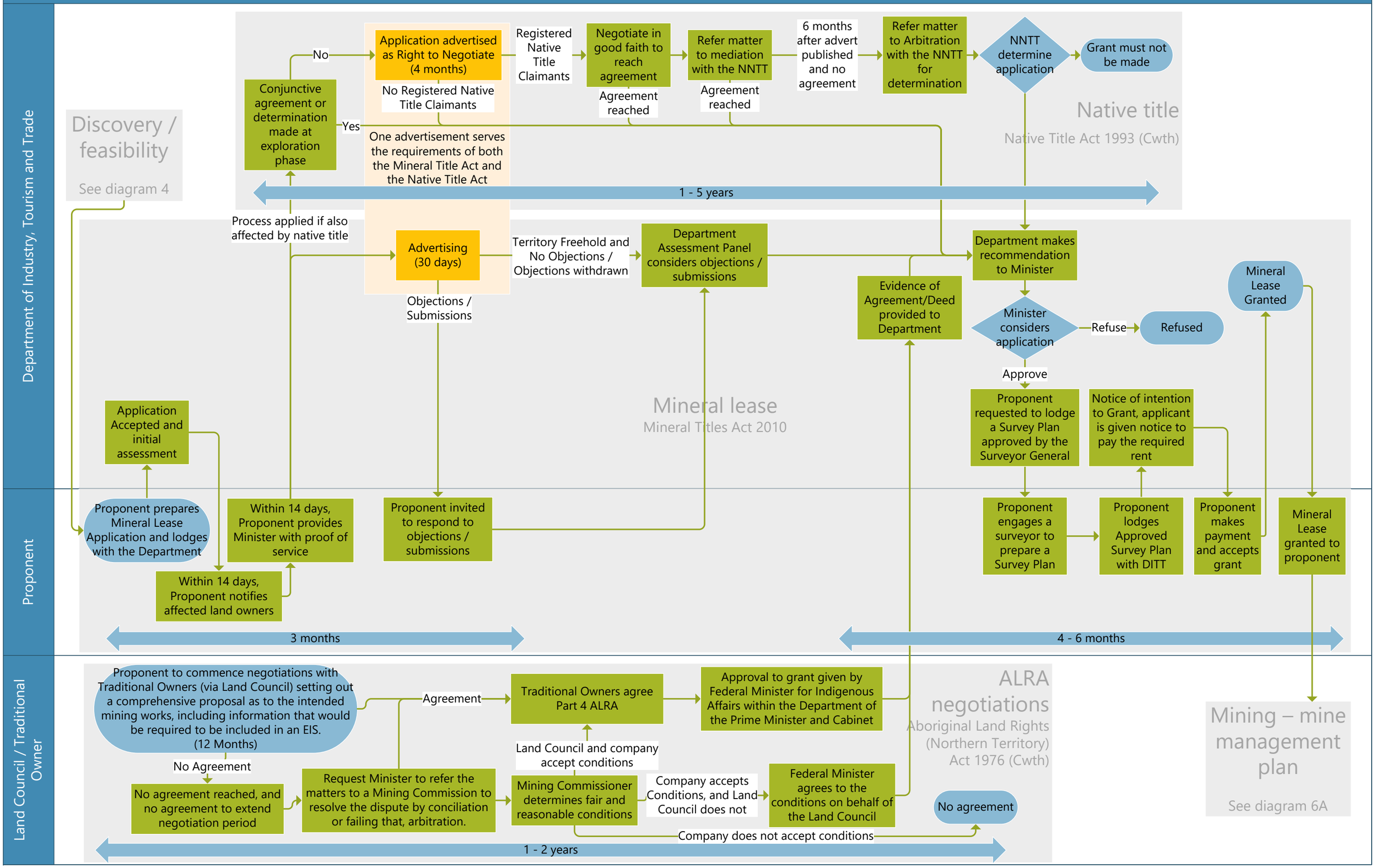
Diagram 5: Mining – mineral lease



Mineral Processes in the Northern Territory

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Diagram 6A: Mining – authorisations

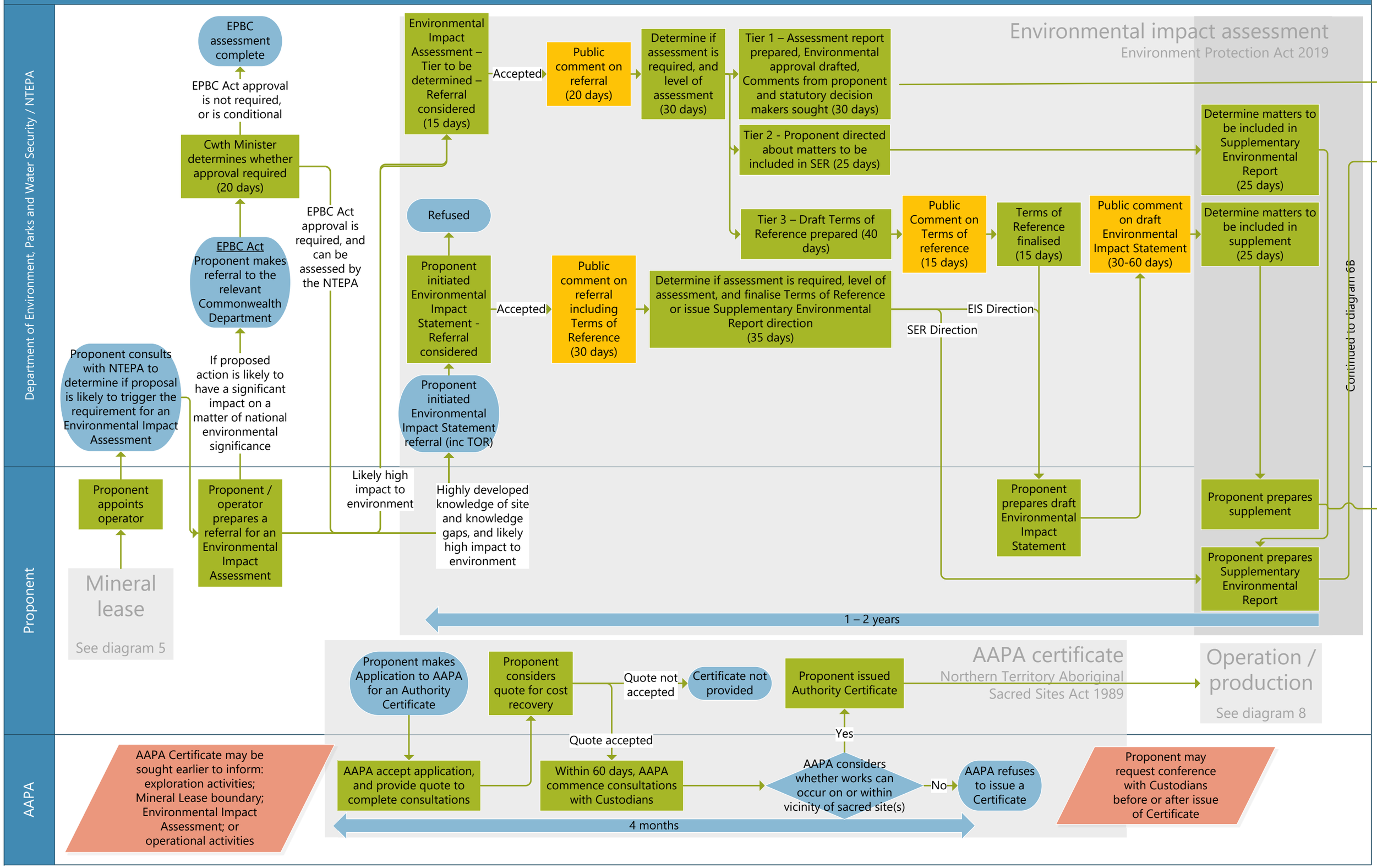

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Diagram 6B: Mining – authorisations

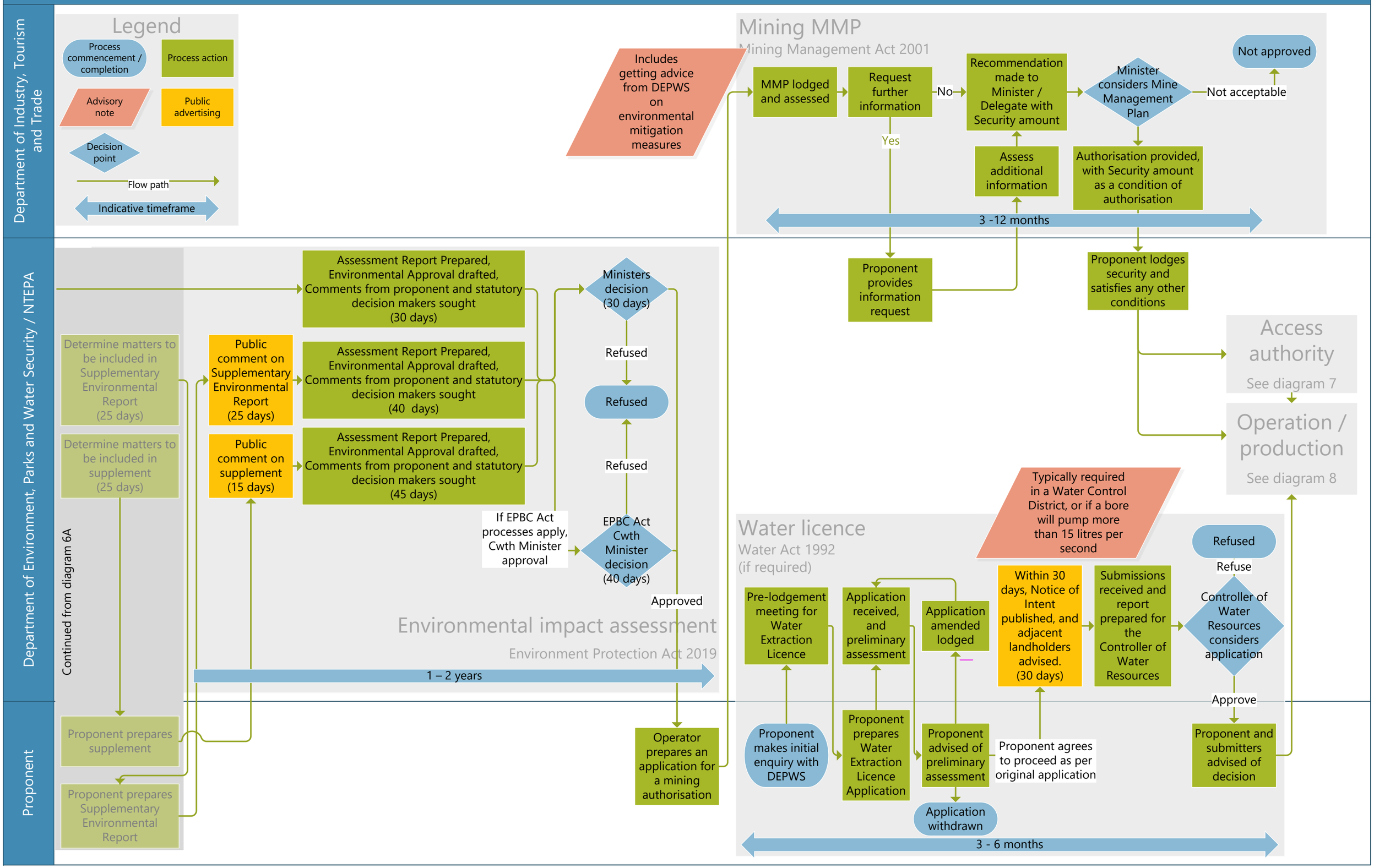

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Diagram 7: Development

Department of Industry, Tourism and Trade

Native title
Native Title Act 1993 (Cwth)

- Negotiate in good faith to reach agreement
- No Agreement
- Refer matter to mediation with the NNTT
- 6 months after advert published and no agreement
- Refer matter to Arbitration with the NNTT for determination
- NNTT determine application
- Grant must not be made
- Agreement Reached
- Agreement Reached
- Conjunctive agreement or determination made at exploration phase
- No
- Yes
- 1 - 2 years

Access authority
- for the construction of all infrastructure outside of the mineral lease, including roads, rail, accommodation, etc.

Mineral Titles Act 2010

- Objection
- Notice provided to Land Council, Native Title Claimants and NNTT, with up to 60 days to lodge an objection
- No Objections or a Conjunctive Agreement reached during exploration
- Land boundary survey completed
- Department makes recommendation to Minister / Delegate
- Minister considers application
- Not approved
- Application received, including evidence of notices and consent to enter land.
- Access Authority provided
- 3 months

Legend
- Process commencement / completion
- Process action
- Advisory note
- Public advertising
- Decision point
- Flow path
- Indicative timeframe

Proponent

- Access Authority
  Proponent provides written notice to land owners, publishes a notice in the paper, and obtains consent to enter land from land owners (including native title parties), at least 14 days before making an application
- Mining MMP
  See diagram 6B
- Water licence
  See diagram 6B
- AAPA authority certificate
  See diagram 6A
- Various permits and approvals are required for:
  - Roads
  - Rail
  - Water (reticulated or bore field)
  - Airstrips
  - Gas
  - Electricity
  - Telecommunications

  To be designed to the standards of the relevant authority, and application made to the relevant authority for construction/access/connection/use
- Operation / production
  See diagram 8

Department of Treasury and Finance

Royalty advance opinion
Mineral Royalty Act 1982

- Proponent has the option to request an Advance Opinion from the mineral royalty Secretary, although this is not absolutely required
- Proponent makes a request for an Advance Opinion from the mineral royalty Secretary regarding a proposal to set up a production unit in so far as it relates to the liability for the payment of royalty.
- Secretary provides a binding Advance Opinion, subject to the Proponent implementing the proposal wholly or substantially in accordance with the terms and conditions of the Advance Opinion.
- Advance Opinion provided to Proponent
- Proponent lodges Section 11 Notice under the Mineral Royalty Act outlining type of mining, commodities produced, election of an accounting method, responsible person, tenement holders, mine manager, and location of the production unit
- DTF receives Section 11 notice

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Diagram 8: Operation / production

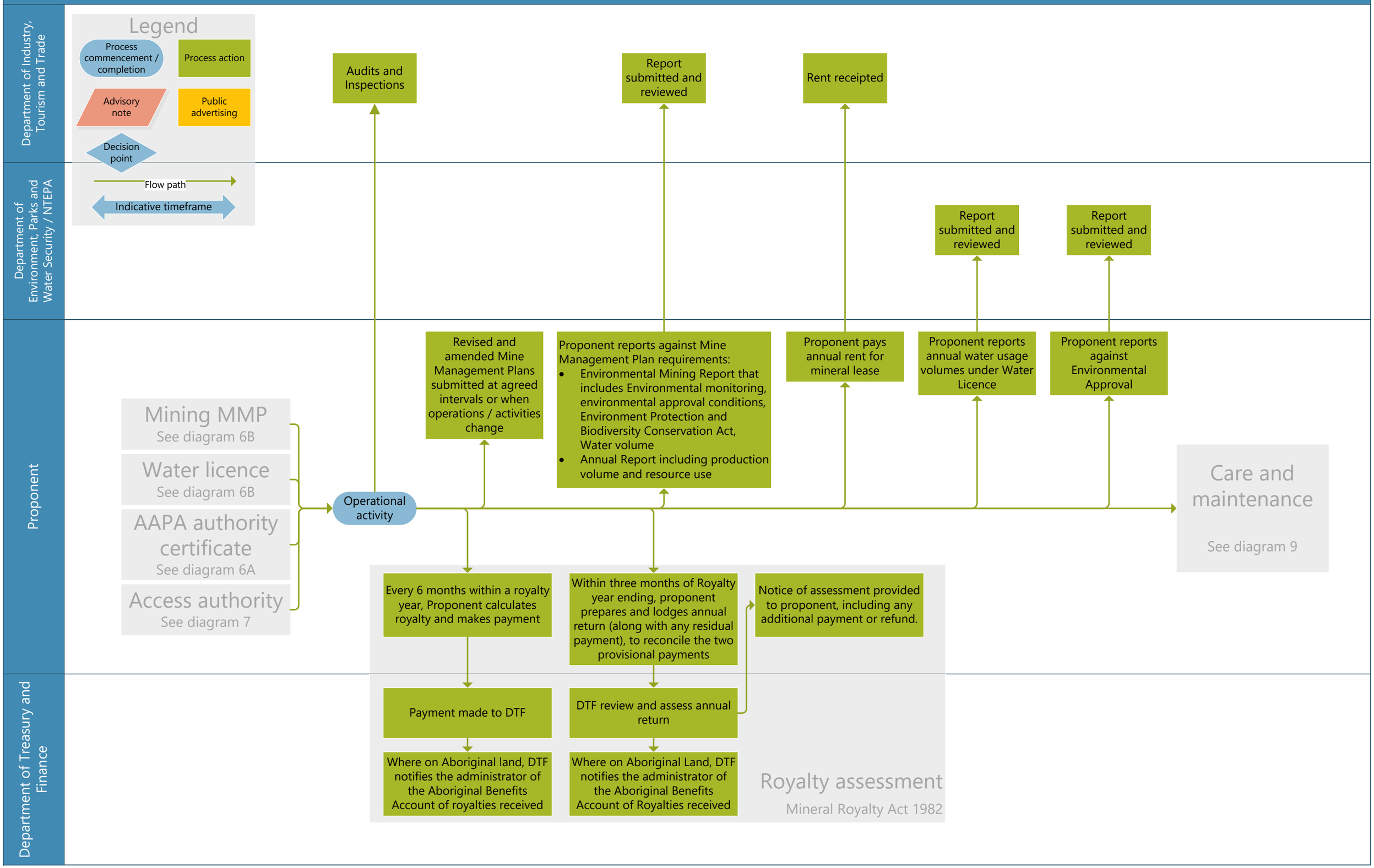

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Diagram 9: Care and maintenance

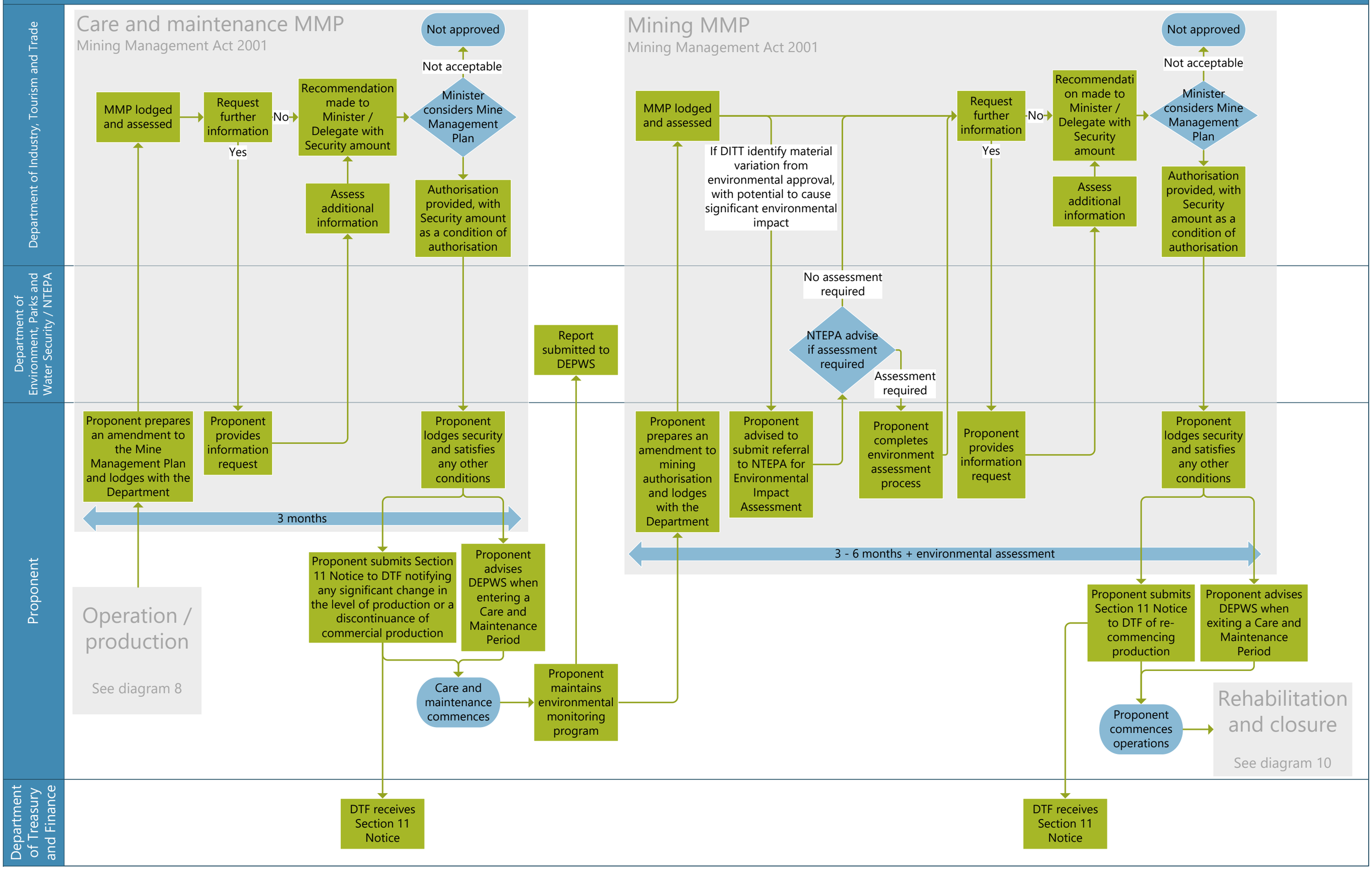

Diagram 10: Rehabilitation and closure

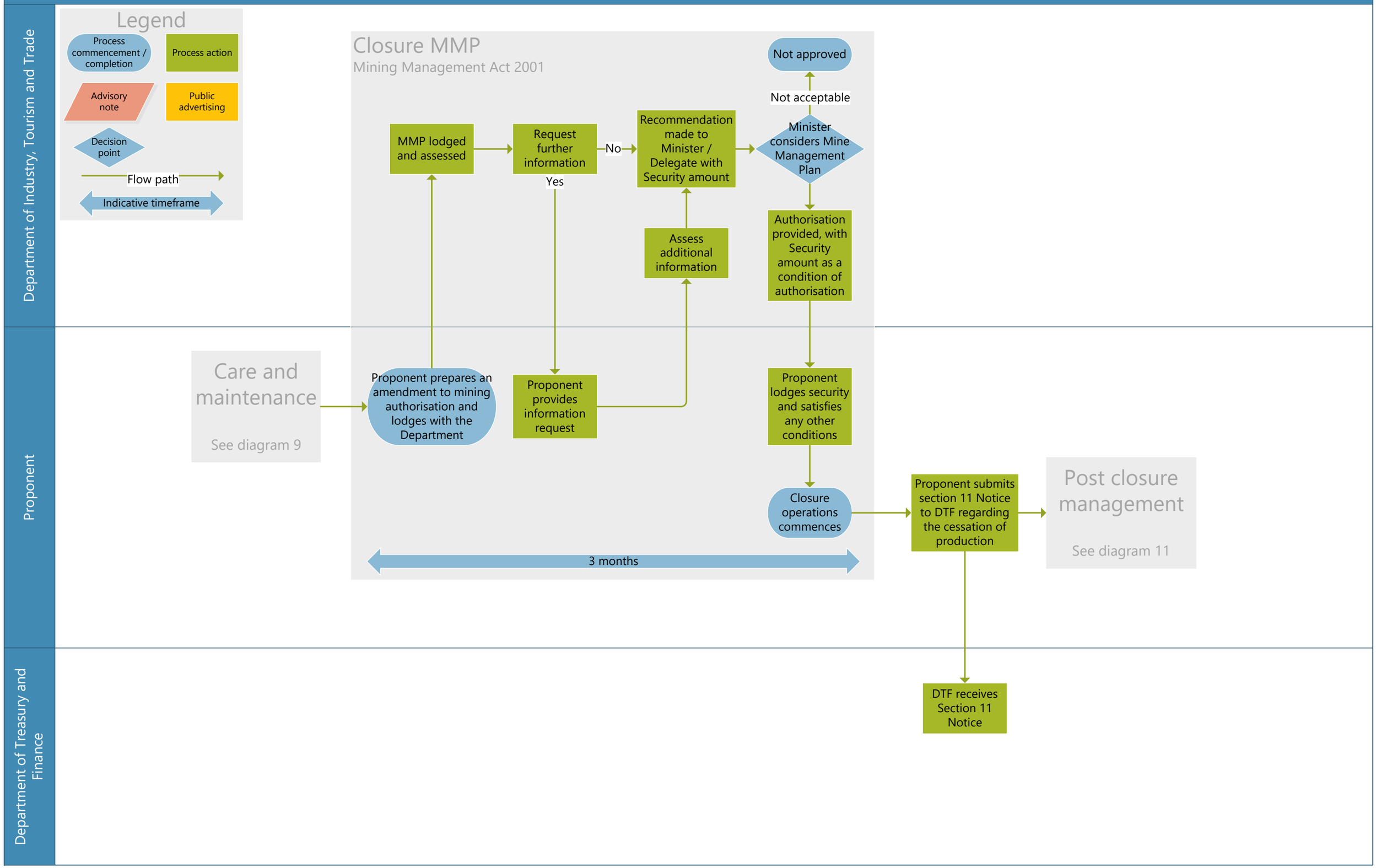

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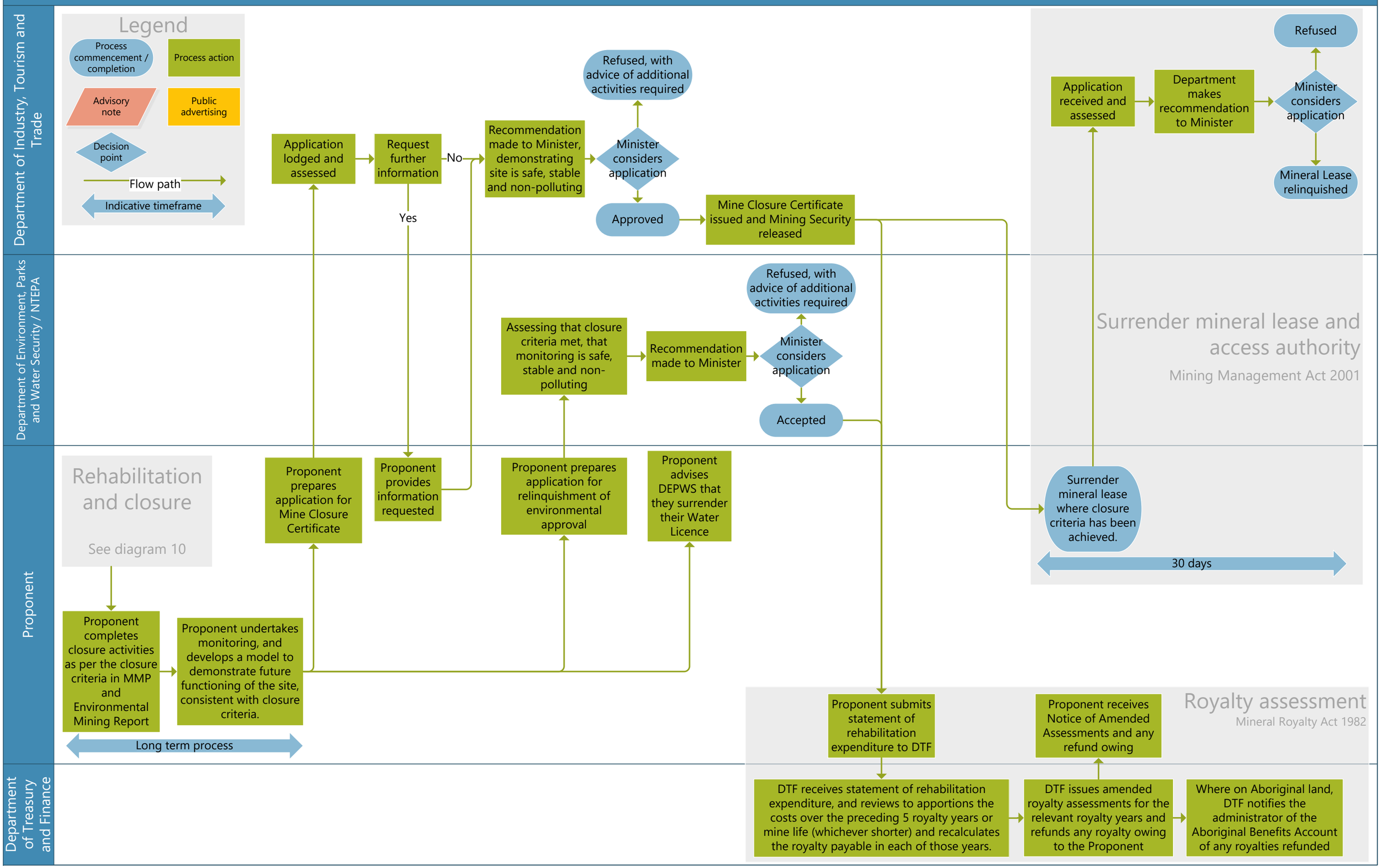
Diagram 11: Post closure management



Mineral Processes in the Northern Territory

Date: 31 March 2017

1. Exploration – exploration licence
2. Exploration – low impact
3. Exploration – substantial disturbance
4. Discovery / feasibility
5. Mining – mineral lease
6. Mining – authorisations
7. Development
8. Operation / production
9. Care and maintenance
10. Rehabilitation and closure
11. Post-closure management

Department of Primary Industry and Resources

Department of Environment, Parks and Water Security (DEPWS)

Proponent

Land Council / Traditional Owners

Other

Legend of Process Symbols

Legend

Process

Decision

Start / Finish

Native title
Native Title Act 1993 (Cth)

Exploration licence
Mineral Titles Act 2010

Exploration MMP
Mining Management Act 2001

Native title
Native Title Act 1993 (Cth)

Mineral lease
Mineral Titles Act 2010

Environmental impact assessment
Environment Protection Act 1993

Mining MMP
Mining Management Act 2001

Native title
Native Title Act 1993 (Cth)

Access authority
Title for construction of off-site infrastructure outside of the mineral lease, including roads, rail, accommodation, etc.

Mineral Titles Act 2010

Water licence
Water Act 1992

Care and maintenance MMP
Mining Management Act 2001

Mining MMP
Mining Management Act 2001

Closure MMP
Mining Management Act 2001

Surrender mineral lease and access authority
Mining Management Act 2001

ALRA negotiations
Aboriginal Land Rights (Northern Territory) Act 1976 (Cwlth)

AAPA abstract of records
Northern Territory Aboriginal Sacred Sites Act 1989

ALRA negotiations
Aboriginal Land Rights (Northern Territory) Act 1976 (Cwlth)

AAPA certificate
Northern Territory Aboriginal Sacred Sites Act 1989

Royalty advance opinion
Mineral Royalty Act 1982

Royalty assessment
Mineral Royalty Act 1982

Royalty assessment
Mineral Royalty Act 1982

7 December 2018

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Dear Ms Woollard

Mining Remediation Fund

On behalf of the Association of Mining and Exploration Companies' I am pleased to comment on *The Strategic Direction and Use of the Mining Remediation Fund Discussion Paper* (Discussion Paper).

The discussion of the MRF is an important step toward increased transparency and certainty of the expenditure of the $23,444,000[1] collected from industry.

The capital in the MRF is still growing and, in theory, will eventually be sufficient to rehabilitate each mine. This will be a slow process, but at least there is a sustainable mechanism to address unsecured mining activities. This is the approach that has been successfully applied in Western Australia through the Mining Rehabilitation Fund. Due to the unforeseen incident with Ellendale diamond mine, the capital had to be accessed. However, the availability of the Mining Rehabilitation for such an outcome shifted the burden away from taxpayers.

AMEC recommends that in the formation of the MRF, it is clearly expressed that the interest from the MRF is made available to rehabilitate unsecured mining activity across the Territory rather than the capital. As outlined in the Mine Management Act, the MRF has the expressed purpose to be applied to rehabilitate circumstances where a past tenement holder/operator have failed to meet rehabilitation obligations and every other effort has been used to recover funds from them has failed.

AMEC is opposed to the inclusion of 'unsecured mining activities' on granted tenure. The inclusion of unsecured mining activities in a company's remediation requirements will make investment in the Northern Territory even less competitive.

Each of the sections of the Discussion Paper is treated separately and answered as follows:

[1] Page 214, Department of Primary Industry and Resources Annual Report 2017-2018

Fund of last resort
The section focuses on whether the Government should rehabilitate unsecured mining activities on a site that has an operator.
Part 46B of the Mine Management Act (MM Act) is very clear regarding this possible of the use of the MRF, specifically clause 3:

> (3) The money held in the Fund may be used for the purpose mentioned in subsection.
> (1) regardless of whether:
> > (a) there is an operator currently carrying out mining activities on land on which the unsecured mining activities were carried out; and
> > (b) the operator is not the person mentioned in subsection (2); and
> > (c) the operator has provided security or paid a levy in relation to the activities currently being carried out.

AMEC considers that no limit should be placed on the level of investigation or remediation works possible on a site that has a current operator. By definition the unsecured mining activities on the site will not be the responsibility of the current mining operator, nor will their remediation be incorporated in the mine plan or closure plan.

Care must be taken that the activities of the MRF do not impede the quiet enjoyment of the tenement. That can be done by clear communication from the outset with the current operator and consideration of a notification system.

Operator and title holder obligations
A fundamental underpinning of the MM Act is that there is a distinction between secured and unsecured mining activities. Section 3 (b) of the MM Act places responsibility for the appropriate management of mine sites on the operator. The MM Act does not state, as the Discussion Paper suggest, that this includes unsecured mining activities. Given that legislatively, the Act includes an environmental bond as an 'appropriate' mechanism to manage environmental obligations, that an unsecured mining activity is unbonded makes plain that it has not been included in the consideration of the mine's environmental obligations.

The MM Act also allows conditions to be set prior to the grant of tenure. It is AMEC's understanding that in the Territory, conditions are rarely set prior to tenure being granted. Conditions should be set more often to clearly set expectations around the remediation of the mine. This would create certainty and allow companies to decide prior to grant of tenure whether to invest.

Industry considers that the Government should not incur a debt on behalf of an operator, prior to exhausting the bond for the activity from the operator that created the environmental damage. The closure plan must be consulted and considered. Furthermore, a clear, transparent, threshold must be identified as to what is environmentally significant enough to warrant Government intervention.

It is a decision for Government how long a tenement can be held in care and maintenance. AMEC has long been a proponent of the 'use it or lose it' principle, particularly in relation to

the 'land banking' of exploration land. One method to prevent the land banking of shuttered mines via care and maintenance provisions is to slowly increase the rent on those tenements that are held for longer than seven years. Such a length of time would allow for a commodity cycle and/or a financial cycle to pass. If a company is unwilling to bring a mine out of care and maintenance, the rising pressure of increasing rentals will force them to use it or face rising cost pressures.

Progressive rehabilitation is a method that has been successfully implemented in most other jurisdictions to encourage rehabilitation earlier than what is legally obliged.

Ultimately, obligation for the activities on a title undertaken during the term they hold it must rest with the title holder. The operator does not undertake activities without their expressed permission. Activities that were undertaken prior to ownership of the title should not be the responsibility of the title holder.

Collaboration and Research

The Department already partners with industry and other stakeholders across a range of issue. If they intend to do so using MRF funding it should be following the consideration of the Mining Remediation Fund Review Panel. If the Government intend to undertake a collaborative approach to remediate abandoned mines, a clear policy framework needs to be developed.

The proposed policy framework should ensure decision on collaboration is undertaken in a strategic manner that minimises environmental and community safety risks and leads towards the realisation of potential value within each site through efficient, sustainable and innovative solutions.

AMEC is supportive of the reuse of existing mines with examples in South Australia of mines pits being reused to create "pumped hydro" sites. An energy solution that would not have been possible prior to mining. The potential for greater collaboration in the reuse of sites needs to further consideration and should be addressed through separate consultation.

The MRF should not be spent on Research. As per the Mine Management Act the MRF levy is raised for "minimising or rectifying the environmental harm of mining activities", it is not for the theoretical but the practical and must be focussed on rehabilitating sites.
The priority should remain on reducing environmental and community safety risks.
Ultimately, this is a decision for the Mining Remediation Fund Review Panel.

Mining Remediation Fund Review Panel and operation

AMEC supports the introduction of a Mining Remediation Fund Review Panel (the Panel). It is appropriate the MRF is governed by a Panel composed of representation from the mining, mineral exploration and extractive industries and an ex-officio representative of the Northern Territory Department of Primary Industry and Resources. In a sense, a "user pays, user says" model should be adopted

In Western Australia the Mining Rehabilitation Fund Advisory Panel meets quarterly to discuss and provide independent expert advice to the Director General of the Department of Mines, Industry Regulation and Safety on Mining Rehabilitation Fund matters. This Advisory

Panel's function is clearly set via the legislation, in the Northern Territory a different arrangement will be necessary.

In the Northern Territory, the Panel should be guided by a clear, publicly available, Terms of Reference. This should include a clear conflict of interest policy and register. The MRF should meet quarterly, be subject to regular audits, and annually the Government should publish a publicly available report detailing its expenditure and activities.

It is critically important that the MRF is operated with the highest degree of transparency.

Prioritisation

There should be a clear benefit to the Northern Territory community with each site (or part of site) chosen for rehabilitation via the MRF. The prioritisation criteria should minimise environmental and community safety risks from unsecured mine activities. The location, whether neighbouring mine or remote, should not influence the prioritisation for expenditure.

The selection criteria for the prioritisation of expenditure considered by the Western Australia department that differ include:

- proximity to environmentally sensitive receptors and populated areas;
- specific feature characteristics that represent a safety or environmental hazard; and
- potential for contamination.

What is critically important is the collection of data regarding unsecured mine activities. It must also be noted that the (then) Western Australian Department of Mines and Petroleum collected data on abandoned mines for 12 years prior to the launch of the Mining Rehabilitation Fund. This data was then prioritised for consideration. A similar process, albeit on a shorter and ongoing timeframe will need to be undertaken prior to the launch of the MRF. It will be difficult to prioritise projects without a dataset with which to do so.

Relative contribution

The application of funds according to how they were levied will dilute the funds available away from sites that are causing the greatest environmental harm or risk to community safety. This fund should focus on operating for the greater good of the Northern Territory.

As stated earlier, the AMEC considers the interest should be the only funds allocated and not the capital.

This Discussion Paper reflects an important first step toward a strategic approach to address unsecured mine activities in the Northern Territory. If you would like to discuss this further please ask your office to contact myself or Neil van Drunen directly.

Yours sincerely

Warren Pearce
Chief Executive Officer