



Environment Institute  
of Australia and  
New Zealand Inc.

17/07/2024

Via email to:  
[REDACTED]

Dear Sir/Madam

**Re: Submission to draft Risk Criteria and Standard Conditions mining exploration and extractives**

Thank you for the opportunity to make a submission to the above.

The Environment Institute of Australia and New Zealand (EIANZ) represents environmental professionals working in environmental science, land management and related professional services such as cultural heritage, legal, community engagement, social scientists, academics and researchers and non-government organisations.

The broad agenda of the EIANZ is to ensure that policy is not only underlined by the principles of sustainability but also that it is practical as it is EIANZ members that will be required to operationalize environmental policy.

The Northern Territory EIANZ Division (EIANZ NT) has a keen interest in environmental policy and legislation development and appreciates the invitation to make a submission. In the last 9 years, the EIANZ NT has made submissions to 22 government guidelines, regulations, policies and papers that have been open for public comment.

**Background**

Since 2016<sup>1</sup>, EIANZ NT has been an advocate for reforming the environmental approvals process in the Northern Territory (NT), in particular in the mining sector. EIANZ NT was delighted when the Environment Protection Bill was drafted in 2018, stating at the time that *the current processes have amplified the distrust the community has of industry and the industry on government process and the non-transparency of the current process has allowed unsubstantiated allegations of impact and environmental mismanagement to thrive, resulting in entire industry sectors being dragged into ill-deserved disrepute.*<sup>2</sup>

Implementation of Standard Conditions was supported in our submission on the *Environmental Mining Reform Program – EP Act amendments* in September 2023 and we thank you for the opportunity make a submission to the draft conditions for exploration and extractives.

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<sup>1</sup> EIANZ NT response to *Comment on Draft advice - Response to Dr Hawke's review 2016*

<sup>2</sup> EIANZ NT submission to draft Environment Protection Bill and draft Regulations.

## Response Summary

The Standard Conditions (SC) license allows for authorization of low-risk mining activities: if a mining operator can fulfill the standard conditions, then a standard licence can be sought. It benefits the operator and regulator by providing clarity on what constitutes a low-risk activity and the conditions under which a mining operator is expected to operate, and consequently should decrease approvals timeframes.

In assessing the risk criteria and SC, three criteria were used:

- (i) Do the proposed conditions fulfill the principles of ESD?
- (ii) Does the proposed process remove any ambiguity from current processes allowing an more clarity of the assessment for both the operator and regulator?
- (iii) Does the proposed process readily fit into auditable criteria?

After assessing both the exploration and extractive SC and risk criteria we conclude in this submission that point (i) is almost addressed adequately (except for heritage and sacred site values) but (ii) and (iii) have not moved us beyond the current situation of uncertainty between operators and regulators. One of the key challenges in gaining approvals is an agreed understanding of all parties on the information requirements that the regulator requires to make their assessment. We present the following examples to demonstrate our concerns with the SC for exploration:

- a. There is still ambiguity of the presence of ecological values (Condition 9) and no direction of how they are to be assessed. Is the existing mapping on NR Maps sufficient across the northern part of the top end? If not, what is the obligation on the exploration operator to fill these gaps? Without comprehensive survey the regulator would be uncertain if the operator is meeting Condition 9, so we haven't moved beyond the current need for comprehensive survey, unless:
  - i. There is clear guidance on how to resolve this, including what is the obligation on the proponent to address knowledge gaps. By way of example, there may be guidance that says avoiding run-on areas will avoid sandsheet heath, this way the operator can clearly show the regulator how they have considered this condition and avoided impact. Similar guidance could be given for each of the other 6 values in Condition 9, including the comprehensiveness of existing mapping.
- b. Additionally, if the exploration activity was subdivided into component parts (for example, seismic lines, camps) and conditions put around these sub-activities, then there is an opportunity to set conditions for each component which may avoid the challenge of assessing material impact. For example, if it was conditioned that seismic lines had to be less than 7 m wide and no large trees cleared then there would be no material impact to the values identified in Condition 11. Consequently, if the operator adhered to these conditions the sub-activity of seismic lines could proceed (we recommend that you refer to the Queensland guidelines how they have done this). Similar approaches could be taken for sub-activities that might require larger land clearing, for example camps. A condition for this might be they be placed in disturbed areas or areas with little vegetation (that are not run-on areas).

Attachment 1 gives specific comments and suggestions against the SC and risk criteria for both exploration and extractive, some general comments include:


- (i) The risk criteria need to be clear and unambiguous so that both operators and regulators are clear that the activity is 'low risk' and can be managed with standard conditions.
- (ii) The terms 'significant impact' and 'material harm' are subjective and require specialist expertise to determine, and therefore are not appropriate for use as risk criteria for standard activities. The risk criteria and conditions should be specifying specific actions that will ensure that activities inherently are unlikely to cause significant impact or material harm.
- (iii) The current risk criteria and conditions allow some activities that should be considered non-standard, for example extraction of sand and gravel from a watercourse, extractives in the marine environment, dredging. These activities pose a higher level of risk and should be subject to a higher level of regulatory oversight. Specific comments are provided in the attachment.
- (iv) To align with the mitigation hierarchy, the risk criteria should address the criteria that ensures significant impact and material harm are 'avoided'. This would allow the standard conditions to focus on 'mitigation' strategies such as reducing impact to as low as reasonably practicable. The standard conditions do not need to repeat the risk criteria.
- (v) To determine compliance with the risk criteria and conditions, in most cases will require a level of assessment similar to that required for land clearing permits. Guidelines for applications should be developed to assist operators to work through the risk criteria and standard conditions, and ensure they provide an adequate level of assessment using good information and data.
- (vi) The risk criteria and standard conditions should be consistent with and reference other Northern Territory Government legislation, policy and guidelines where relevant. In particular the environmental values should align with the Northern Territory Environment Protection Authority factors and objectives framework.

### **In conclusion**

In conclusion, EIANZ NT would like to congratulate the Northern Territory Government for the continuing reform process and appreciate the opportunity to make a submission to this reform. As EIANZ NT members and associates will be implementing these reforms we look forward to further collaborating with the NTG on these reforms.

Yours sincerely,



JEFF RICHARDSON,  
President,  
Northern Territory Division  


## Attachment 1 – Specific comments and suggestions

This attachment provides specific comments and suggestions in relation to the four documents provided for comment:

1. Risk criteria for exploration
2. Standard conditions for exploration
3. Risk criteria for extractives
4. Standard conditions for extractives.

### Risk criteria for exploration

Criteria #	Comment/suggestion
1	<p>Suggest removing the text “<i>and which has a significant impact on the environment.</i>” The text creates ambiguity because it indicates that clearing more than 10 ha or excavating more than 400 m<sup>3</sup> would be permitted if it doesn't have a significant impact on the environment. We don't believe this is the intent as the standard conditions limit the amount of clearing and excavation.</p> <p>Further to this, we suggest the use of the term 'significant impact' should be avoided in risk criteria. We believe that the purpose of the risk criteria is to define impact limits that make the activity inherently unlikely to have a significant impact, thus removing the need for operators to judge whether their impact is significant or not.</p> <p>Suggest removing reference to “<i>at any one time</i>” or otherwise clarifying what this means. To manage cumulative impacts, we suggest it would be appropriate for the disturbance limits to be applied to each lease area and for the period until the disturbance is remediated to the satisfaction of the regulator. For example, if an operator has cleared a total of 10 ha and now wants to clear more, they should either apply for a non-standard licence, and/or rehabilitate areas of land to bring the total disturbance below the 10 ha threshold.</p>
2	<p>The term 'material' needs to be defined. Suggest cross referencing the NTG <i>Interference with a waterway guideline (Jan 2024)</i> which provides clear guidance and examples of what is a material change.</p>
3	<p>Consider expanding this criterion to include:</p> <ul style="list-style-type: none"> <li>• All areas listed in Standard Condition 5 – the risk criteria and standard conditions should be consistent.</li> <li>• A declared heritage place or object within the meaning of Part 2.2 of the <i>Heritage Act 2011</i>.</li> <li>• Sacred sites within the meaning of the <i>NT Aboriginal Sacred Sites Act 1989</i>.</li> </ul>
4	<p>As per comments for criteria 1 above, we suggest removing the text “<i>and which has a significant impact on the environment.</i>” Any clearing or disturbance within sensitive/significant vegetation, including within the buffer zones defined in the NT Land Clearing Guidelines, has potential to have a significant impact and therefore should be subject to a non-standard application.</p> <p>Further, for consistency across different NTG policies we suggest that this criterion cross-references the sensitive or significant vegetation types per Section 4.4.6 of the NT Land Clearing Guidelines.</p> <p>The vegetation type 'dense or closed forest' requires further definition. Wetlands, GDE's, sinkholes should be added to the list.</p>

Criteria #	Comment/suggestion
NA	For other (non-mining) development activities in the NT, a land clearing permit is required for clearing greater than 1 ha. As part of the permitting process there are a range of environmental and heritage considerations as per Section 4.2 of the NT Land Clearing Guidelines. Given the standard risk criteria for exploration will allow clearing of up to 10 ha (10x more than other industries are permitted to do without a permit), we suggest it would be appropriate that applications for a standard licence would include a land and vegetation assessment, and consideration of biodiversity risk and heritage impacts. The assessment will provide valuable information to the operator and to regulators to confirm that activities meet the standard criteria. To give clarity to all parties we recommend that the NTG, in collaboration with key stakeholders, develop a method of rapid land and vegetation assessment for exploration and extractive industries and clearly define the level of analysis and interpretation required for the regulator.
NA	The criteria do not consider biodiversity risk beyond sensitive/significant vegetation types. Clearing of up to 10 ha does have potential to have significant impact on range restricted fauna if that clearing were to intersect important habitat. For example, if clearing for an access track or exploration camp directly impacted Bilby burrows, this could have a significant impact on the species. Suggest that the risk criteria be expanded to include consideration of biodiversity risks per the NT Land Clearing Guidelines. For exploration to meet standard risk criteria it should have a low biodiversity risk rating.

#### Standard conditions for exploration mining activities

Criteria #	Comment/suggestion
1	Refer comments on risk criteria above
2	Suggest referring to guidelines that the NTG consider 'good industry practice' and/or providing a footnote that defines how an operator determines what is 'good industry practice'.
NA	To avoid repetition, we suggest that conditions 3-6 could just be included as risk criteria and then don't really need to be repeated as conditions.
3a	<p>Suggest removing reference to "<i>at any one time</i>" or clarifying what this means. To manage cumulative impacts, we suggest it would be appropriate for the disturbance limits to be applied to each lease area and for the period until the disturbance is remediated to the satisfaction of the regulator. For example, if an operator has cleared a total of 10 ha and now wants to clear more, they should either apply for a non-standard licence, and/or rehabilitate areas of land to bring the total disturbance below the 10 ha threshold.</p> <p>Further, there should be a note associated with this condition outlining expectations in clearing vegetation such as retaining root stock, retaining vegetation to later rehabilitate or direction to a suitable guideline. And, as discussed above directing the operator to, where possible, utilize areas already disturbed may avoid material impact.</p>
4	The term 'material environmental harm' needs to be defined. It is unclear as to why these three activities have been called out specifically in this condition. These activities do pose a higher risk and therefore either they should be non-standard, or the standard conditions should include more guidance as to how to ensure they do not cause material environmental harm.



Criteria #	Comment/suggestion
7	We agree in principle but suggest this condition more specifically document expectations with respect to managing impacts from dust, noise and light etc. We also note that expectations with respect to traffic impacts are not addressed in the conditions. Suggest including a condition that addresses traffic impacts on communities, other road users and other land uses.
8-11	Suggest further consideration needs to be given to the flora and fauna conditions. Per earlier comments, we suggest that a biodiversity risk assessment is required as per the NT Land Clearing Guidelines, and only those activities with a low-risk rating would meet the risk criteria for standard conditions. This would then allow the standard conditions to really focus on providing clear guidance to operators on how to minimise impacts from their activities. The conditions as they are do not provide the level of guidance that operators will need.
8	We are not sure that the SOCS are the best point of reference for this condition. There are important biodiversity values outside of SOCS and many of the values associated with SOCS do not apply (for example some species are extinct, others are not on the threatened species list anymore). Per earlier comments, impacts to range-restricted fauna need to be addressed.
9	<p>Suggest this condition is not required because it is a risk criterion. The risk criteria should be updated to include the buffer requirements. Suggest the buffer requirements should be consistent with the NT Land Clearing Guidelines – noting that 250 m is the maximum recommended buffer.</p> <p>If this condition is to be used, then ideally the ecological community wording should align with the NT's Land Clearing Guidelines. Secondly, there needs to be clarification on the expectations of the operators to understand the areas they are working; while some ecological communities (for example mangroves) can be readily differentiated, others (for example dense forest) cannot. Is it incumbent on the operator to understand if they are within a 250 m buffer of closed forest or not? Some ecological communities – such as close(d) forest and sandsheet heath – require substantial investment to identify on-ground; should this be the obligation of the explorer?</p> <p>From the perspective of the regulator when they are reviewing an application for a standard condition, they should ask to what extent are these ecological communities mapped within the area of interest? In reality, the regulator wouldn't know without a significant on-ground investment, so the regulator is also stuck in a bind and due to doubt on the presence of these values can't permit standard conditions. This is the current situation where we work without complete information but the regulator needs full information to make a determination. As per earlier comments, we recommend that a guideline be developed to clarify information requirements and responsibilities for applications and for this to be consistent with the Environmental considerations of the NT Land Clearing Guidelines. Furthermore, our recommendation in the Response Summary of this submission gives a suggestion on how this may issue be partially mitigated.</p>
10	We would have expected that the direction to reduce vegetation clearance and surface disturbance would be a general condition. We don't understand the need for this condition noting condition 2 allows a certain area to be cleared (10 ha). Suggest this condition could more specifically be used to limit the area cleared at any given time and require progressive rehabilitation.
11	The term 'material environmental harm' needs to be defined. As written this condition implies that the operator is required to understand the extent of clearing

Criteria #	Comment/suggestion
	of large trees and the extent to which these have hollows. We feel that there is a missed opportunity here to give guidance to the operators, for example, if a narrow seismic line is being put through dense woodland, then the activity precludes material environmental harm. In contrast clearing a large area for a campsite may potentially cause environmental harm so it is incumbent on the operator to clear elsewhere. From a regulator's perspective how can they be satisfied that this condition is met without involved field study? Some further guidance is required here.
13	Some direction on the storage requirements for fuel and lubricants could be added here, giving direction to the Australian Standard. This would give clear statements of standards for the operator and compliance for the regulators.
15	Suggest this condition is not required because it is a risk criterion. Condition 9 states that the mining operator must not undertake any mining activity inside a 250 m buffer from the outer edge of: ... (d) riparian vegetation. Consequently, mining activity in these areas is expressly forbidden.
17	Suggest it would be appropriate to refer to the relevant Australian Standards and guidelines. Further, suggest cross referencing of the bore and water licencing requirements under the Water Act.
18	We note that the 500 m buffer is inconsistent with the NT Land Clearing Guidelines, which state buffers of 50 – 250 m required depending on habitat value. Further, there should be a note attached to this condition directing operators to the NR Maps layers of springs and sinkholes. That way the operator, and regulator, are clear of the expectation.
20b	Suggest reconsidering this condition. Most miners will intend to use a disturbed area for future activity. The presence/absence of a resource often will not be confirmed for years, which means this condition could be used to justify not rehabilitating an area.
21	This condition needs to have a timeframe.
NA	Suggest adding a condition about prioritizing the use of already disturbed areas (for example existing tracks and road reserves for seismic lines).
NA	Suggest adding a condition about protecting heritage values and providing clear guidance to operators in relation to expectation for heritage protection. It is noted that clearing of 10 ha has potential for significant impacts to heritage if heritage sites are present.
NA	Suggest adding a condition about protecting sacred sites and providing clear guidance to operators in relation to expectations under the <i>Aboriginal Sacred Sites Act 1989</i> .
NA	Suggest adding a condition addressing weed hygiene for plant and machinery. The standard condition for weed hygiene should state when weed hygiene is a consideration for example, moving between LGA or bioregions.
NA	Suggest adding a condition addressing biosecurity.
NA	Suggest adding a condition that requires where bores are installed, they should be either removed or capped.

### Risk criteria for extractives

As the criteria are structured the same as for exploration, our comments provided above for the exploration activities are also relevant to this document.

In addition, with respect to risk criterion 2 (*The mining activity does not cause a material change to the bed, banks, course or flow of a waterway so as to cause, or likely cause, a significant impact on the environment*), we suggest that any extractive activity that involves extracting sand or gravel from a waterway, should be considered a non-standard activity. The standard conditions do not provide enough guidance on how an activity should be undertaken to prevent significant impacts occurring. It is our view that this activity should be assessed on a case-by-case basis so that site specific mitigation measures can be put in place commensurate with the environmental risk.

#### Standard conditions for extractives

Criteria #	Comment/suggestion
1	Refer comments on risk criteria above.
2	Suggest referring to guidelines that the NTG consider 'good industry practice' and/or providing a footnote that defines how an operator determines what is 'good industry practice'.
3a	<p>Suggest removing reference to "<i>at any one time</i>" or clarifying what this means. To manage cumulative impacts, we suggest it would be appropriate for the disturbance limits to be applied to each lease area and for the period until the disturbance is remediated to the satisfaction of the regulator. For example, if an operator has cleared a total of 10 ha and now wants to clear more, they should either apply for a non-standard licence, and/or rehabilitate areas of land to bring the total disturbance below the 10 ha threshold.</p> <p>Further, there should be a note associated with this condition outlining expectations in clearing vegetation such as retaining root stock, retaining vegetation to later rehabilitate etc or direction to a suitable guideline. And, as discussed above directing the operator to, where possible, utilize areas already disturbed may avoid material impact.</p>
3cii	Per earlier comments, we note that wetlands and GDEs are not included in the list of habitats that must be avoided. Excavations to 2 m or 10 m in these habitats and surrounding buffer areas could alter groundwater flows.
4	<p>The term 'material environmental harm' needs to be defined. It is unclear as to why these activities have been called out specifically in this condition. These activities do pose a higher risk and therefore either they should be non-standard, or the standard conditions should include more guidance as to how to ensure they do not cause material environmental harm.</p> <p>4d) wet processing – suggest providing more guidance here on how you would ensure no material harm from wet processing. Also suggest cross referencing water licencing requirements under the Water Act.</p> <p>4e) dredging – suggest this is a higher risk activity that should require a non-standard application. For example, sand dredging in a river should have a level of oversight that is not provided by the standard conditions.</p> <p>4g) sand or gravel extraction from a waterway that causes material change – this is a risk criteria and so doesn't also need to be a condition.</p>
5	Suggest a-e are included in the risk criteria and then this condition is not required. If this section is going to remain, then suggest it needs to be consistent with the risk criteria.
6	<p>We agree in principle but suggest this condition more specifically document expectations with respect to managing impacts from dust, noise and light etc.</p> <p>We also note that expectations with respect to traffic impacts are not addressed</p>



Criteria #	Comment/suggestion
	in the conditions. Suggest including a condition that addresses traffic impacts on communities, other road users and other land uses.
7-10	Please refer to our comments on the exploration standard conditions. They are all equally relevant to the extractives flora and fauna conditions. We note that condition 10b requires that known caves are not damaged – this was not referenced in the exploration conditions. Suggest caves and sinkholes are added to the list of habitat features to be avoided and buffered in the risk criteria.
12	Some direction on the storage requirements for fuel and lubricants could be added here, giving direction to the Australian Standard. This would give clear statements of standards for the operator and compliance for the regulators.
14	Per our comments above on the risk criteria, we suggest that sand or gravel extraction from a waterway should be a non-standard activity. The requirements under the Water Act for permits to alter a waterway should be considered here. Any activity that triggers the requirement for a permit should be a non-standard activity. Further, extraction from a waterway by definition would generally involve working in riparian or wetland habitats, which is not permitted according to the risk criteria.
15	This condition does not provide an adequate level of environmental protection. We suggest that any activity in the marine environment should be a non-standard activity. With respect to AMD, you would need to undertake a level of assessment to determine the risks, and this is generally not done for extractives because the target resources and shallow depth of mining poses an inherently low risk.
16	Agree with this condition but note it wasn't in the exploration standard conditions. Suggest it is added.
17	We note that the 500 m buffer is inconsistent with the NT Land Clearing Guidelines, which state buffers of 50 – 250 m required depending on habitat value. Further, there should be a note attached to this condition directing operators to the NR Maps layers of springs and sinkholes. That way the operator, and regulator, are clear of the expectation.
20	Suggest including reference to guidelines that if complied with will ensure no material harm.
21b	Suggest reconsidering this condition. Most miners will intend to use a disturbed area for future activity. The presence/absence of a resource often will not be confirmed for years, which means this condition could be used to justify not rehabilitating an area.
22	This condition needs to have a timeframe.
NA	Suggest adding a condition about prioritizing the use of already disturbed areas (for example existing tracks and road reserves for seismic lines).
NA	Suggest adding a condition about protecting heritage values and providing clear guidance to operators in relation to expectation for heritage protection. It is noted that clearing of 10 ha has potential for significant impacts to heritage if heritage sites are present.
NA	Suggest addition a condition about protecting sacred sites and providing clear guidance to operators in relation to expectations under the <i>Aboriginal Sacred Sites Act 1989</i> .
NA	Suggest adding a condition addressing weed hygiene for plant and machinery. The standard condition for weed hygiene should state when weed hygiene is a consideration for example moving between LGA or bioregions.
NA	Suggest adding a condition addressing biosecurity.