

**Consistent with the ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY)
ACT 1976**

Review of detriment issues - Finnis River Land Claim (No. 39)

Submissions on behalf of the Claimants

1 Report No. 9 – Finnis River Land Claim (No. 39)

The comments concerning detriment in the Report record that it would be unlikely for any detriment to be suffered so long as the Commonwealth has access to undertake rehabilitation and records that access by the Northern Territory Government (“**Territory**”) to its assets on the land would be preserved by s. 14 Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) (“**ALRA**”) [Report paragraphs 309 and 472 (24)].

2 Submissions to the review

The following submissions have been provided –

- (i) Department of Industry, Innovation and Science;
- (ii) Northern Territory Resources Pty Ltd;
- (iii) Doe Run Company; and
- (iv) Northern Territory of Australia.

3 Rehabilitation of mine site on Area 4 - NT Portion 2968.

As noted in the NT Submissions at Part 1 Paragraph g. previous rehabilitation efforts have not lasted and a major rehabilitation project is in the planning stages and will be implemented “subject to funding and government decisions”. Therefore the ultimate completion date of the project is presently unknown. The claimants have been consulted during the planning and support rehabilitation. The claimants are consistent in seeking grant of title to the area but only once it has been satisfactorily rehabilitated, and the Land Trust indemnified against the risk of a failed rehabilitation. The comments dealing with rehabilitation in the Report record that the traditional owners did not oppose rehabilitation (see para 310).

4 After the Report was published, the claimants entered negotiations with the Territory over a railway corridor from Alice Springs to Darwin. These discussions gave rise to a Supplementary Deed dated 11 February 1999 between the Territory and the NLC that records the following agreement:

Grant of Rum Jungle Mine Site

The Territory shall support an approach by the NLC to the Commonwealth for the grant of the Rum Jungle Mine Site as Aboriginal land under the provisions of the Aboriginal Land Rights (Northern Territory) Act, provided that the Territory and the Commonwealth are able to continue with monitoring and any remedial works required in respect of the former mine site on the Rum Jungle Mine Site.

- 5 Neither the claimants nor the Northern Land Council (“NLC”) are able to assume the risk of a failed rehabilitation. The allocation of liability and responsibility between the Territory and Commonwealth is a matter for those parties. The Land Trust would need to be fully indemnified by government so that the Territory and/or Commonwealth retain liability for risk and cost associated with the legacy mine and claim area and that they continue any monitoring and maintenance activities.
- 6 More recently, the claimants have been consulted by the Territory about the design of the rehabilitation project as part of The Project Agreement for the Management of the Former Rum Jungle Mine Site (Stage 2A) [**Attachment 1**]. The claimants wish to remain involved in the rehabilitation process, and remain optimistic that eventually title to the claim area will be granted. They may benefit from possible employment and economic opportunities during the rehabilitation.

7 **Mining interests**

Should the claim area become Aboriginal land and Northern Territory Resources Pty Ltd (“NTR”) the holder of Exploration Licence in Retention No. 146 (“ELR”) seek a mineral lease, then Part IV of the ALRA will apply. The application of the ALRA to land as a consequence of it becoming Aboriginal land is not a detriment. This is discussed in paragraphs 281-8 of the Report. We adopt as part of these submissions the paragraphs 61-63 of the Claimant’s Submissions to the Review regarding Groupings 1 and 4 to the extent that they apply.

- 8 In practical terms, the application of the ALRA could not prevent the granting of a mineral interest to the holder of an ELR [ALRA s. 45 & s. 46(7)]. Any perceived delay caused by the agreement making process could be factored into the timeframe for the project and could be mitigated by beginning negotiations now.
- 9 Given that rehabilitation of the claim area will not be completed for some years, it is possible that the holder of the ELR may have finalised any activities on the land before a grant of title is made. This is acknowledged in NTR’s submission (letter of 4 July 2018 p.2). It is a risk it has already knowingly accepted and one that the Doe Run Company can assess prior to obtaining any interest in the land.
- 10 The submission by NTR suggests that any mining work on the claim area may reduce clean-up costs otherwise borne by the public. No evidence of this is provided. The NLC was advised in 2017 by an officer of the Department of Primary Industry and Resources [**Attachment 2**] that a restriction is in place on the title for ELR No. 146, being:

“Renewal is on condition that no mining activity resulting in surface or subsurface disturbance, substantial or otherwise will occur on any area of this title that has been rehabilitated, is in the process of rehabilitation or is planned to be rehabilitated; unless that activity has been approved by the Department prior to commencement of the activity.”

It is not known whether these conditions have changed or if approvals for activities have been given.

12 **Roads**

The Rum Jungle Road and the unconstructed and unmaintained road included in the Territory's submission do not affect the grant of the title because those roads do not enter the boundaries of the claim area.

13 **Public Recreation**

Based on the submissions there appears to be little current or future interest in this area for public recreation. We emphasise that the Territory describes public access as "infrequent" and that no submissions were made by the public. Presumably public access to the partially rehabilitated mine site carries public health and safety risks. Regardless of the grant, it is not clear how public access will be managed during the rehabilitation works and post-rehabilitation monitoring.

We submit that public recreation in the region is unlikely to suffer as a result of the grant, especially given that the claim area is located close by to parks and recreation areas.

14 **Business**

The claimants have expressed interest in pursuing employment and economic opportunities, including tourism, that may become possible during and post-rehabilitation. The Project Agreement for the Management of the Former Rum Jungle Mine Site (Stage 2A) includes commitments by the Commonwealth to be responsible for capacity building of traditional Aboriginal owners to develop business structures and governance, and by the Territory to be responsible for promoting participation of Aboriginal owners in the repair and maintenance works. An inference is drawn from this that the Territory and Commonwealth anticipate that the rehabilitation and an eventual grant of title will present rather than deter future economic opportunities.

15 **Summary**

The claimants have remained consistent in their support for rehabilitation and an eventual grant of title. The detriment issues raised should not stand in the way of this grant.



Matilda Hunt

Solicitor for the Claimants

31 August 2018

PROJECT AGREEMENT FOR THE MANAGEMENT OF THE FORMER RUM JUNGLE MINE SITE (STAGE 2A)

An agreement between:

- n the Commonwealth of Australia; and
- n the Northern Territory.

The output of this project will be the delivery of the Rum Jungle Mine Site Rehabilitation Project (Stage 2A) at sites within the former Rum Jungle Uranium Field.

Project Agreement for the Management of the Former Rum Jungle Mine Site (Stage 2A)

OVERVIEW

1. This Project Agreement (the Agreement) is created subject to the provisions of the Intergovernmental Agreement on Federal Financial Relations (IGA FFR) and should be read in conjunction with that Agreement and its Schedules, which provide information in relation to performance reporting and payment arrangements under the IGA FFR.

Purpose

2. This Agreement will support the delivery of the Rum Jungle Mine Site Rehabilitation Project (Stage 2A) at sites within the former Rum Jungle Uranium Field, including repairs and maintenance at the Rum Jungle Creek South site to ensure that it continues to meet Australia's public radiation protection standard.

Reporting Arrangements

3. The Northern Territory will report against the agreed milestones during the operation of this Agreement, as set out in Part 4 – Project Milestones, Reporting and Payments.

Financial Arrangements

4. The Commonwealth will provide an estimated total financial contribution to the Northern Territory of \$10.048 million, exclusive of GST, in respect of this Agreement, as set out in Part 5 – Financial Arrangements.

PART 1 – FORMALITIES

5. This Agreement constitutes the entire agreement for this project.

Parties to this Agreement

6. This Agreement is between the Commonwealth of Australia (the Commonwealth) and the Northern Territory.

Term of the Agreement

7. This Agreement will commence as soon as the Commonwealth and the Northern Territory sign it and will expire on 30 June 2019 or on completion of the project, including final performance

reporting and processing of final payments against milestones, unless terminated earlier or extended as agreed in writing by the Parties.

PART 2 – PROJECT OUTPUTS

Outputs

8. The outputs of this Agreement will be the delivery of the Rum Jungle Mine Site Rehabilitation Project (Stage 2A) including:
 - (a) revised finalised rehabilitation design, costings and supporting documentation (including for a 20 year post-rehabilitation period) to support statutory approvals and the Detailed Business Case;
 - (b) site management, maintenance and environmental monitoring activities;
 - (c) repairs and maintenance work on the cover system at Rum Jungle Creek South; and
 - (d) stakeholder engagement.

PART 3 – ROLES AND RESPONSIBILITIES OF EACH PARTY

Role of the Commonwealth

9. The Commonwealth will be responsible for:
 - (a) monitoring and assessing achievement against milestones in the delivery of the Rum Jungle Mine Site Rehabilitation Project (Stage 2A) under this Agreement to ensure that outputs are delivered within the agreed timeframe;
 - (b) providing a consequent financial contribution to the Northern Territory to support the implementation of this Agreement;
 - (c) development of a Detailed Business Case to seek capital works funding for the Rum Jungle Mine Site Rehabilitation Project (Stage 3), in accordance with the Department of Finance's Two Stage Capital Works Approval Process and Gateway Review Process and in accordance with the [Resource Management Guide No. 502 \(Commonwealth of Australia, 2014\)](#); and
 - (d) capacity building support of Rum Jungle's traditional Aboriginal owners, including development of business structures and governance frameworks.

Role of the Northern Territory

10. The Northern Territory will be responsible for:
 - (a) providing an in-kind contribution to support the implementation of this Agreement;
 - (b) all aspects of delivering on the project outputs set out in clause 8(a) to 8(c), inclusive, of this Agreement;
 - (c) chairing stakeholder engagement meetings, and providing secretariat support;

- (d) providing supporting documentation, including information in Appendix A developed for the design and costings required to assist the Commonwealth in the development of the Detailed Business Case;
- (e) reporting on the delivery of outputs as set out in Part 4 – Project Milestones, Reporting and Payments; and
- (f) promoting participation of traditional Aboriginal owners in the Rum Jungle Creek South repair and maintenance works in support of the output set in clause 9 (d) of this Agreement.

Shared roles

- 11. The Parties agree to be jointly responsible for managing and participating in:
 - (a) implementing a governance structure for strategic and operational decision-making with clear roles, responsibilities and accountabilities including:
 - i. managing and participating in a Joint Steering Committee or equivalent on governance and strategic oversight of the whole of the Rum Jungle Rehabilitation Project; and
 - ii. conducting bilateral consultations on strategic matters, including but not limited to, stakeholder engagement, risk, liability and responsibility;
 - (b) providing project management to support the implementation of the Agreement and Detailed Business Case development, including joint development of a master schedule, stakeholder engagement and communications plan, risk register and management plan, and post closure stewardship model.
- 12. The Parties also agree to be jointly responsible for engaging affected stakeholders to contribute to delivery of the Rum Jungle Mine Site Rehabilitation Project (Stage 2A) as set out in this Agreement.
- 13. The Parties will meet the requirements of Schedule E, Clause 26 of the IGA FFR, by ensuring that prior agreement is reached on the nature and content of any events, announcements, promotional material or publicity relating to activities under this Agreement, and that the roles of both Parties will be acknowledged and recognised appropriately.

PART 4 – PROJECT MILESTONES, REPORTING AND PAYMENTS

- 14. Table 1 summarises the milestones for the project, their relationship to the outputs, expected completion dates, relevant reporting dates and expected payments to be made. The Commonwealth will make payments subject to the relevant performance report demonstrating the relevant milestone has been met.

Table 1: Performance requirements, reporting and payment summary

Outputs	Milestones	Report due	Payment
Rehabilitation	Establish monitoring stations to acquire baseline environmental information for noise and air quality	15 December	\$2,216,000

design	Complete drilling of Main Pit Tailings	2017	
	Complete geotechnical drilling footprint area of new Waste Storage Facility		
	Submit application for Aboriginal Areas Protection Authority (AAPA) certificate for potential Stage 3 works		
Stakeholder engagement	Undertake and document stakeholder engagement and communication (traditional Aboriginal owner, community)		
Rehabilitation design	Conduct ongoing baseline air and noise monitoring	15 May 2018	\$3,860,000
	Finalise engineering design for water management and access during construction phase		
	Complete in-field waste prioritisation assessment activities		
	Complete wet season site flora and fauna survey		
	Complete geomorphology review of Finniss River		
	Complete geotechnical investigations, traffic impact and safety audit for intersection design		
	Conduct flume erodibility trials		
Site management, maintenance and environmental monitoring activities	Complete annual maintenance earthworks, site security, fire control and weed management and control		
	Conduct ongoing environmental monitoring (surface and groundwater), analysis and updating of water quality values		
Rum Jungle Creek South cover system	Finalise design requirements (technical specifications and drawings)		
	Finalise Radiation Management Plan (RMP) for works		
	Complete traditional Aboriginal owner employment plan		
	Complete site management activities (including native seed collection)		
Stakeholder engagement	Undertake and document stakeholder engagement and communication (traditional Aboriginal owner, community)		
Rehabilitation design	Complete socio-economic impact assessment consultations and data analysis		
	Finalise in-field waste prioritisation and segregation program		
	Finalise and audit contaminated land assessment and remediation action plan		
	Conduct lime amendment mixing trials		

	Finalise Waste Storage Facility design and location (survey points)	15 December 2018	\$1,324,000
	Finalise pit backfill methodology including: <ul style="list-style-type: none"> tailings management, supporting procedures and works specifications; and copper extraction pad groundwater remediation. 		
	Finalise excavation plan (and volumes) for borrow material		
	Finalise dry season off site flora and fauna survey and assessment		
	Finalise revised site wide radiological assessment		
	Finalise engineering design for water treatment plant (that meets NT EPA discharge requirements if any)		
	Finalise multi-criteria assessment of design options and alternatives		
	Submit Draft Environmental Impact Statement (EIS)		
Rum Jungle Creek South cover system	Complete construction and demonstrate through a post construction report compliance with design and quality assurance/quality control standards.		
	Complete revegetation		
Stakeholder engagement	Undertake and document stakeholder engagement and communication (traditional Aboriginal owner, community)		
Rehabilitation design	Finalise delivery of design including: <ul style="list-style-type: none"> procurement ready documentation of final drawings and technical specifications; and a cost estimate that can support probabilistic cost estimations to P80 using risk based contingencies 	15 May 2019	\$2,648,000
	Submit Supplementary EIS (if required)		
Site management, maintenance and environmental monitoring activities	Complete annual maintenance earthworks, site security, fire control and weed management and control	15 May 2019	\$2,648,000
	Conduct ongoing environmental water monitoring (surface and groundwater), analysis and updating of water quality values		
Rum Jungle Creek South cover system	Finalise construction and post-construction dose assessment (RMP)		
	Conduct revegetation monitoring		
	Complete site management activities including repairs if required		
Stakeholder	Undertake and document stakeholder engagement		

engagement	and communication (traditional Aboriginal owner, community)		
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15. If a milestone is met in advance of the due date, where the relevant performance report demonstrates that the milestone has been met, the Commonwealth may make the associated payment earlier than scheduled provided it falls within the same financial year as the original milestone date.

Reporting arrangements

16. The Northern Territory will provide performance reports in accordance with Table 1 during the operation of the Agreement. Each performance report is to contain a description of actual performance in the period to date against the project milestones.

PART 5 – FINANCIAL ARRANGEMENTS

17. The Commonwealth will provide an estimated total financial contribution to the Northern Territory of \$10.048m in respect of this Agreement. All payments are GST exclusive.
18. The Commonwealth's funding contribution will not be reduced where the Northern Territory secure funding from other activity partners.
19. The Commonwealth's estimated financial contributions to the operation of this Agreement, including through National Partnership payments to the States paid in accordance with *Schedule D – Payment Arrangements* of the IGA FFR, are shown in Table 2.

Table 2: Estimated financial contributions

(\$ million)	2017-18	2018-19	Total
Estimated total budget (1)	6.122	4.041	10.163
Less estimated National Partnership Payments (2)	6.076	3.972	10.048
Commonwealth own purpose expense (3) ^(a)	0.046	0.069	0.115
Total Commonwealth contribution (4) = (2) + (3)	6.122	4.041	10.163
Balance of non-Commonwealth contributions (5) = (1) - (4)	0.0	0.0	0.0

^(a) Commonwealth funding for finalisation of the Detailed Business Case required for the Two Stage Capital Works Approval Process and capacity building support of traditional Aboriginal owners.

20. Having regard to the agreed estimated costs of projects specified in this Agreement, the Northern Territory will not be required to pay a refund to the Commonwealth if the actual cost of the project is less than the agreed estimated cost of the project. Similarly, the Northern Territory bears all risk should the costs of a project exceed the agreed estimated costs. The Parties acknowledge that this arrangement provides the maximum incentive for the Northern Territory to deliver projects cost effectively and efficiently.

PART 6 – GOVERNANCE ARRANGEMENTS

Review of the Agreement

21. To assess the degree to which the purpose and outcomes have been achieved and to inform decisions regarding the next stage of work following the expiry of this agreement, a review of the Agreement will be scheduled to be completed approximately six months prior to its expiry.

Enforceability of the Agreement

22. The Parties do not intend any of the provisions of this Agreement to be legally enforceable. However, that does not lessen the Parties' commitment to this Agreement.

Variation of the Agreement

23. The Agreement may be amended at any time by agreement in writing by both the Parties.
24. Either Party to the Agreement may terminate their participation in the Agreement at any time by notifying the other Party in writing.

Delegations

25. The Commonwealth Minister may delegate the assessment of performance against milestones and the authorisation of related project payments to senior Commonwealth officials, having regard to the financial and policy risks associated with those payments.

Dispute resolution

26. Either Party may give notice to other Party of a dispute under this Agreement.
27. Officials of both Parties will attempt to resolve any dispute in the first instance.
28. If a dispute cannot be resolved by officials, it may be escalated to the relevant Ministers.

Interpretation

29. For the purposes of this Agreement:
 - (a) Former Rum Jungle Uranium Field means the following four sites – Rum Jungle, Rum Jungle Creek South, Mount Burton and Mount Fitch;
 - (b) Rum Jungle means the area of land identified as Section 2968, Hundred of Goyder; and
 - (c) Rum Jungle Creek South means the area of land identified as Section 2830, Hundred of Goyder.

The Parties have confirmed their commitment to this agreement as follows:

*Signed for and on behalf of the Commonwealth
of Australia by*



The Honourable Barnaby Joyce MP
Minister for Resources and Northern Australia
[Day] [Month] 2017

07 SEP 2017

*Signed for and on behalf of the Northern
Territory by*

 29/9/17

The Honourable Kenneth Vowles MLA
Minister for Primary Industry and Resources

[Day] [Month] 2017

The Parties have confirmed their commitment to this agreement as follows:

Signed for and on behalf of the Commonwealth
of Australia by



Senator the Honourable Matthew Canavan
Minister for Resources and Northern Australia

22 NOVEMBER 2017

Signed for and on behalf of the Northern
Territory by

The Honourable Kenneth Vowles MLA
Minister for Primary Industry and Resources

2017

Appendix A

Supporting documentation

1. Consistent with Clause 10 (d), underpinning information required to support development of the revised final rehabilitation design and costings, including for the 20 year post-rehabilitation period, should be provided to the Commonwealth to inform the development of the Detailed Business Case.
2. This information includes, but is not limited to, the following:
 - (a) performance criteria for rehabilitation;
 - (b) statement or advice from the traditional Aboriginal owners and/or their representative body on their views of the proposed rehabilitation works and on the proposed land use (joint consultation responsibility);
 - (c) evidence to support the following changes made to the 2013 Conceptual Design (Stage 1) during Stage 2 (e.g. cost, benefit, risk):
 - o water filled Intermediate Pit
 - o Main Pit backfill methodology
 - o location of the new purpose built Waste Rock Dump
 - o borrow material source
 - o Mt Burton and Mt Fitch design
 - o post rehabilitation costs;
 - (d) evidence to support each significant change in design (if any) made between Stages 2 and 2A (e.g. cost, benefit, risk);
 - (e) source, quantities and cost estimate of borrow material;
 - (f) construction/works plan;
 - (g) basis of capital cost estimate;
 - (h) in accordance with 10 (c), stakeholder engagement meeting and decision records, particularly with traditional Aboriginal owners and their representative body;
 - (i) traditional Aboriginal owner employment/participation plan – during and post works;
 - (j) procurement approach;
 - (k) design for key elements of the preferred option;
 - (l) approach to water treatment and management of waste streams during construction of rehabilitation works ;

- (m) capital cost plan¹ for preferred option (Class 3) aligned with design procurement, governance, water treatment, workforce plan and value-engineered² that can support a probabilistic cost estimation to P80; reviewed by an independent estimator;
- (n) provide an updated cost comparison table for the five options identified during Stage 1 using where applicable cost data generated during Stage 2; where this is not applicable use Northern Territory Department of Primary Industry and Resources desktop generated costs to complete the comparisons;
- (o) program for preferred option with Work Breakdown Structure; and
- (p) procurement and contracting model.

¹ Includes works, contingency and risk costs, and administrative costs.

² Value engineering is a process to examine all facets of a project to determine where capital and O&M (operation and maintenance) costs can be reduced, while still delivering a project that produces the outputs desired by the Owner. The process should always include life cycle cost analysis, and should not sacrifice quality for cost reduction.

Matilda Hunt

From: Denise Turnbull <Denise.Turnbull@nt.gov.au>
Sent: Thursday, 30 November 2017 11:12 AM
To: Ann Grattidge
Cc: Tania Laurencont; Roslyn Vulcano; Armando Padovan; Emma Muntz
Subject: ELR 146 Rum Jungle Rehabilitation Project Area

Good afternoon Ann,

Thank you for your enquiry of 7/11/2017. I can confirm that your understanding of restrictions placed on granted titles held in this area by Territory Iron are correct. In relation to ELR146 specifically, when it was renewed in December 2016 a special condition was added to the renewal approval document stating:

“Renewal is on condition that no mining activity resulting in surface or subsurface disturbance, substantial or otherwise will occur on any area of this title that has been rehabilitated, is in the process of rehabilitation or is planned to be rehabilitated; unless that activity has been approved by the Department prior to commencement of the activity.”

To date the titleholder has made no application to commence any new mining within ELR 146. Any proposals are still very much in the conceptual stage and it may be more helpful for you if your enquiry was directed to the company.

I apologise for the delay, the above email was in my draft documents.
Regards

Denise Turnbull

Director Mineral Titles

Mineral Titles

Department of Primary Industry and Resources

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Our Vision: Creating a public sector that provides the highest quality service to Territorians

Our Values: Commitment to Service | Ethical Practice | Respect | Accountability | Impartiality | Diversity