

4. Legislative Framework

4.1 Overview

This chapter provides the legislative background for the Project including relevant Commonwealth and Northern Territory legislation and guidelines.

For background on the environmental assessment process and prior environmental assessment conducted on the project site, refer to Chapter 1.

4.2 Commonwealth Legislation and Strategies

4.2.1 Environment Protection and Biodiversity Conservation Act 1999

Under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), any development requires assessment if it has the potential to affect one or more of eight Matters of National Environmental Significance (MNES). The MNES include:

- ▶ World Heritage properties;
- ▶ National Heritage places;
- ▶ Wetlands of international importance (listed under the Ramsar Convention);
- ▶ Listed threatened species and ecological communities;
- ▶ Migratory species protected under international agreements;
- ▶ Commonwealth marine areas;
- ▶ The Great Barrier Reef Marine Park; and
- ▶ Nuclear actions (including uranium mines).

The environment under the EPBC Act includes:

- ▶ ecosystems and their constituents;
- ▶ natural and physical resources;
- ▶ qualities and characteristics of locations, places and areas;
- ▶ heritage values of places; and
- ▶ social, economic and cultural aspects.

Vista Gold submitted a referral under the EPBC Act to SEWPaC on 21 April 2011. The Minister for Sustainability, Environment, Population and Communities declared the action (the Project) a “controlled action” on the 30 June 2011. The EPBC Act controlling provisions were identified as listed threatened species and communities (sections 18 and 18A) and listed migratory species (sections 20 and 20A). Issues relating to flora and vegetation, fauna and MNES are addressed in Chapters 13, 14 and 22 respectively.

4.2.2 Native Title Act 1993

This Act recognises native title in lands over which native title is not extinguished and where persons able to establish native title are able to prove continuous use, occupation or other classes of behaviour and actions consistent with a traditional cultural possession of those lands.

The objectives of the *Native Title Act 1993* are to:

- ▶ provide for the recognition and protection of native title;
- ▶ establish ways in which future dealings affecting native title may proceed and to set standards for those dealings;
- ▶ establish a mechanism for determining claims to native title; and
- ▶ provide for, or permit, the validation of past acts, and intermediate period acts, invalidated because of the existence of native title.

The project site is on Jawoyn freehold land.

Indigenous Land Use Agreements may be entered into by Native Title claimants and other interested parties that address the nature of land use and access to land, including the protection of cultural heritage resources. No such agreements are in place covering lands within the project area.

The Native Title Act has set a standard for consultation with Aboriginal people over cultural heritage matters. It is common in most Australian jurisdictions to involve Aboriginal people in cultural heritage and / or archaeological surveys of their lands or former lands. Consultation and surveys were conducted with Jawoyn Traditional Owners. Consultation also occurred with the Jawoyn Association and Aboriginal Areas Protection Authority and a Cultural Heritage Management Plan has been developed. Chapters 9 (Land) and 15 (Heritage) and Appendices Q (Heritage) and R (Cultural Heritage Management Plan) provide additional information.

4.2.3 Clean Energy Act 2011

The Clean Energy Future legislation has introduced a carbon pricing mechanism that has a broad coverage from commencement, encompassing the stationary energy sector, transport, industrial processes, non-legacy waste and fugitive emissions. The carbon pricing mechanism commenced on 1 July 2012, with a fixed price for the first three years, after which the carbon price will transition to a fully flexible price under an emissions trading scheme, with the price determined by the market.

Key regulations that are relevant to the carbon pricing mechanism include the Clean Energy Regulations 2011, and the National Greenhouse and Energy Reporting Regulations 2008.

The mine site will exceed thresholds for participation in the carbon pricing mechanism. Participation will need to be determined based on actual annual greenhouse gas emissions. Greenhouse gas emissions are discussed in Chapter 20.

4.2.4 National Greenhouse and Energy Reporting Act 2007

In the 2012-2013 reporting year, the National Greenhouse and Energy Reporting Scheme applies to facilities that emit over 25,000 tonnes of carbon dioxide equivalent (t CO₂-e) per year or consume more than 100 terajoules (TJ) of energy or corporations that emit over 50,000t CO₂-e per year or consume more than 200TJ of energy. These thresholds relate to Scope 1 and Scope 2 emissions.

Based on estimated energy use during operations, the Project will trigger the facility and corporation thresholds. Participation will need to be determined based on actual annual greenhouse gas emissions and energy consumption. Refer to Chapter 20 Greenhouse Gas Emissions.

4.2.5 Energy Efficiency Opportunities Act 2006

The Energy Efficiency Opportunities program requires businesses to identify, evaluate and publicly report cost effective energy saving opportunities. Participation in Energy Efficiency Opportunities program is mandatory for corporations that use more than 0.5PJ of energy per year.

The Mt Todd Gold Project will use more than 0.5PJ of energy per year at full production levels, therefore it will be mandatory to report this under the Energy Efficiency Opportunities program. Participation will need to be assessed based on actual energy consumption to determine the first year the threshold is exceeded. Refer to Chapter 20 Greenhouse Gas Emissions.

4.2.6 Carbon Credits (Carbon Farming Initiative) Act 2011

The Carbon Farming Initiative has been developed to give farmers, forest growers and landholders the ability to generate accredited domestic offsets for access to domestic voluntary and international carbon markets.

Although it is unlikely that the Mt Todd Gold Project will generate offsets at the mine site, any claims relating to 'carbon neutrality' for the Project (or part thereof) should give consideration to the use of offsets generated under the Carbon Farming Initiative. Refer to Chapter 20 Greenhouse Gas Emissions.

4.3 Northern Territory Legislation

4.3.1 Mining Management Act 2001 and Mining Management Regulations 2001

The *Mining Management Act 2001* and accompanying regulations provides for authorisation of mining activities, management of mining sites, protection of the environment on mining sites and related purposes. The Act is administered by DME. The objectives of the Act are:

- ▶ ensure the development of the Territory's mineral resources in accordance with environmental standards consistent with best practice in the mining industry;
- ▶ protect the environment by:
 - requiring authorisation for and monitoring of mining activities;
 - requiring appropriate management of mining sites through implementation of management systems;
 - facilitating consultation and cooperation between management and workers in implementing environment protection management systems;
 - implementing audits, inspections, investigations, monitoring and reporting to ensure compliance with agreed standards and criteria; and
 - specifying the obligations of all persons on mining sites with respect to protection of the environment.
- ▶ assist the mining industry to introduce programs of continuous improvement to achieve best practice environmental management;

- ▶ enable persons connected with the mining industry to participate in the implementation of this Act through the establishment of a Mining Board to advise the Minister on:
 - guidelines for the industry;
 - specification of competencies required by persons involved in the industry;
 - best practice in mining activities; and
 - minimising the liability of the Territory by requiring the payment of security to provide for the rehabilitation of mining sites or to rectify environmental harm caused by mining activities.

The Mining Management Amendment Bill 2011 was passed and came into force on 1 July 2012. Key changes include:

- ▶ enabling the Chief Executive Officer of DME to require investigations of less-serious environmental incidents that do not result in material environmental harm (in addition to the current requirements for incidents causing material environmental harm);
- ▶ allowing the publication of reports by operators or mining officers following environmental incidents;
- ▶ obligation for mining operations on mineral leases to publically report environmental performance in the form of a Environmental Mining Report which forms part of the annually submitted Mining Management Plan;
- ▶ introducing new environmental offences and confirming the application of Part IIAA of *the Criminal Code Act 1983* (Northern Territory) (the Criminal Code) to offences under the Act; and
- ▶ Community Benefits Plan required for mining authorisation of a new mine.

A MMP and Authorisation for the proposed work is required from the Minister of Mines and Energy before work can commence. The environmental assessment process will allow the Minister to be informed of potential environmental impacts and proposed management to assist in the decision making process.

The Minister will require security for potential costs of rectifying environmental harm and rehabilitating the site.

4.3.2 Environmental Assessment Act 1982 and Environmental Assessment Administrative Procedures 1984

The *Environmental Assessment Act 1982* and *the Environmental Assessment Administrative Procedures 1984* ensure each matter affecting the environment is fully examined and taken into account in, and in relation to:

- ▶ formulation of proposals;
- ▶ carrying out of works and other projects;
- ▶ negotiation, operation and enforcement of agreements and arrangements (including agreements and arrangements with authorities of the Commonwealth, the states and other territories);
- ▶ making of, or the participation in the making of, decisions and recommendations; and
- ▶ incurring of expenditure.

The Project was referred by the then Northern Territory Department of Resources (DoR) on 21 April 2011 to the then NRETAS for environmental assessment. On 8 August 2011, the then Northern Territory

Minister for Natural Resources, Environment and Heritage determined that the Project required a formal assessment under the Environmental Assessment Act at the level of an EIS.

Draft EIS Guidelines were prepared by the former NRETAS, dated September 2011. Amendments to the EA Act mean the NT EPA is responsible for administration and future assessments under the EA Act.

This Draft EIS addresses the Draft EIS guidelines and forms part of the application for environmental approval for the Project (Appendix B).

4.3.3 Northern Territory Environment Protection Authority Act 2012

The *Northern Territory Environment Protection Authority Act 2012* commenced on 1 January 2013. The Act establishes the new NT EPA as an independent regulatory authority and makes consequential amendments to the *Waste Management and Pollution Control Act 2009* and the Environmental Assessment Act.

Amendments to the *Waste Management and Pollution Control Act 2009* identify the NT EPA as the entity responsible for administration of the regulatory functions of that Act.

Amendments to the Environmental Assessment Act identify the NT EPA as the entity responsible for administration of the assessment functions and impose additional transparency and reporting responsibilities on the Environment Minister and the responsible Minister for specific projects.

4.3.4 Northern Territory Aboriginal Sacred Sites Act 2004

The *Northern Territory Aboriginal Sacred Sites Act 2004* is administered by the Aboriginal Areas Protection Authority (AAPA). The Act provides for the location, recognition, description and protection of sites sacred under Aboriginal tradition. All sacred sites (even if not registered) are protected under the Act and it is an offence to enter or carry out work on a sacred site without permission or a certificate issued by the AAPA. The certificate sets out conditions under which the work may be carried out.

Consultation with the Jawoyn Association and AAPA has been undertaken by Vista Gold, Earth Sea Heritage and GHD as part of various components of the Project. A Heritage Impact Assessment Report is included in Appendix Q, and a draft Cultural Heritage Management Plan is included in Appendix R.

A number of aboriginal sites are present within the project area, some of which will require disturbance to allow the Project to progress. An Authority Certificate was obtained on 31 July 2012 for sites impacted by the proposed works.

4.3.5 Heritage Act 2011

The *Heritage Act 2011* (Heritage Act) commenced on 1 October 2012, replacing the *Heritage Conservation Act 1991*.

Chapter two of the Act allows for the establishment of the Northern Territory Heritage Register. Members of the community can nominate areas, places, sites, buildings, shipwrecks and heritage objects to the register. If the Minister agrees that these features are of special significance to the heritage of the Northern Territory, the place is added to the register. The place will then be protected from accidental and deliberate damage or harm. The Act allows for processes to approve works and maintenance for a heritage place. There are no nominated or declared heritage places in the project area.

Sections 17 and 18 of the new Act declare all Aboriginal and Macassan archaeological places and objects heritage places, providing the same level of protection as places on the Heritage Register. Part 3.2 of the Heritage Act allows for approvals to carry out work on heritage places, including work on, or salvage of, Aboriginal archaeological sites.

In practice, approvals to salvage Aboriginal Archaeological places will be issued under conditions which include the approval of the appropriate Traditional Owner or Site Custodian for a site. Work approvals under the new Act will also require reasonable study of each site disturbed, and appropriate curation of any artefacts salvaged. This will normally mean repatriation of artefacts to the appropriate Traditional Owners of an area.

The Heritage Act includes a provision for the declaration of classes of places or objects that are known to be of significance in the Northern Territory but where not all locations are currently mapped and recorded. Protection may be extended to:

- ▶ relics of the Overland Telegraph Line (there are numbers of these places in the project area);
- ▶ WWII aircraft crash sites;
- ▶ lone graves (i.e. graves that are not in regular cemeteries); and
- ▶ shipwrecks in Northern Territory waters.

If the relics of the Overland Telegraph Line become protected in the future, then it is likely that a work approval under Part 3.2 will be required to move or salvage these sites, Refer to Appendix Q. In particular a small percentage of Mt Todd 26, potentially the largest known historic Aboriginal quarry workings in Australia, is proposed to be disturbed by the expansion of the WRD and Batman Pit. Recommendations for other sites potentially directly impacted are included in Chapter 15 Heritage.

4.3.6 National Environment Protection Council (Northern Territory) Act 1994

The *National Environment Protection Council (Northern Territory) Act 1994* establishes the National Environmental Protection Council to set national environmental goals and standards for Australia through the development of National Environment Protection Measures.

Section 14(1) of the National Environment Protection Council Act prescribes that National Environment Protection Measures may relate to any one or more of the following:

- ▶ ambient air quality;
- ▶ ambient marine, estuarine and fresh water quality;
- ▶ the protection of amenity in relation to noise;
- ▶ general guidelines for the assessment of site contamination;
- ▶ environmental impacts associated with hazardous wastes; and
- ▶ the re-use and recycling of used materials.

Mitigation and management measures were developed in accordance with Section 14(1) of the Act and are documented in Chapter 9 Land, Chapter 10 Surface Water, Chapter 16 Air Quality, Chapter 17 Noise and Vibration and Chapter 21 Waste).

4.3.7 Planning Act 1999

The *Planning Act 1999* defines "development" as an activity that involves carrying out works on land, including clearing of native vegetation. "Works" is defined as any activity on land other than mining or agriculture, resulting in a physical change to the land or a part of the land.

The planning scheme requires native vegetation to be cleared in accordance with the Land Clearing Guidelines 2010 (NRETAS 2010). This document contains guidelines for clearing, including the submission of a property management plan by the applicant. The Planning Act does not apply to mining. As the proposed works are being undertaken as part of a mining operation the Land Clearing Guidelines (NRETAS 2010) do not apply to this Project. However one of the requirements of the Draft EIS Guidelines is to discuss proposed clearing with regard to issues raised and recommendations contained within the Land Clearing Guidelines 2010. The issues and recommendations concerned include:

- ▶ vegetation and flora;
- ▶ native animals (fauna);
- ▶ significant vegetation types and habitat;
- ▶ significant areas and land features;
- ▶ buffers and corridors;
- ▶ rivers, creeks and wetlands;
- ▶ soil landscape;
- ▶ erosion risk;
- ▶ greenhouse gas emissions;
- ▶ cultural heritage; and
- ▶ water supply and drainage.

Refer to the respective chapters of the Draft EIS for further information on land clearing and its proposed impact.

4.3.8 Water Act 1992

The *Water Act 1992* covers allocation, use, control, protection and management of Northern Territory water resources.

Pollution under the Act includes directly or indirectly altering the physical, thermal, chemical, biological or radioactive properties of the water so as to render it less fit for a prescribed beneficial use for which it is or may reasonably be used, or to cause a condition which is hazardous or potentially hazardous to:

- ▶ public health, safety or welfare;
- ▶ animals, birds, fish or aquatic life or other organisms; and
- ▶ plants.

Removing the existing surplus water on site (for example from the Batman Pit) does not form part of this environmental assessment process. Dewatering of the site prior to construction / reopening of the mine is subject to a separate approval process requiring a WDL under the Act. During operation and for three years post closure discharge of waste water may be required until waste water can be treated via

passive wetlands. An amended WDL will be required for the operation and closure phases. A design for the constructed wetland will be finalised to confirm that water quality exiting the wetlands will meet site-specific trigger levels prescribed in the WDL.

For further information, refer to Chapter 1 Introduction and Chapter 10 Surface Water.

4.3.9 Waste Management and Pollution Control Act 2009

The purpose of the *Waste Management and Pollution Control Act 2009* is to protect the environment through objectives and approvals, encouraging effective and responsible waste management and reduction and response to pollution. This Act facilitates the implementation of national environment protection measures made under the *National Environment Protection Council (Northern Territory) Act 1999*, and incorporates environmental compliance plans and audits.

Section 14 of the Act establishes a process for notifying the NT EPA (the administering agency for the Act) about incidents causing, or threatening to cause pollution. Schedule 2 of the Act requires environment protection / licensing for certain activities.

Waste management controls and pollution prevention measures are documented throughout the Draft EIS, specifically Chapter 21 Waste. An emergency response procedure for potential environmental incidents is included in the Draft EMP in Appendix Z.

4.3.10 Waste Management and Pollution Control (Administration) Regulations 2012

These regulations deal with administrative issues such as fees for licensing and approvals and payment of "on the spot fines".

4.3.11 Other Legislation

Other legislation that may be applicable to the Project includes:

- ▶ *Territory Parks and Wildlife Conservation Act 2006*;
- ▶ *Soil Conservation and Land Utilisation Act 1980*;
- ▶ *Weeds Management Act 2001*;
- ▶ *Bushfires Act 2009*;
- ▶ *Fire and Emergency Act 1996*;
- ▶ *Dangerous Goods Act 1998*;
- ▶ *Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act 2011*;
- ▶ *Traffic Act 2012*;
- ▶ *Work Health and Safety Act 2011* and Regulations; and
- ▶ *Work Health and Safety (National Uniform Legislation) Act 2011* and Regulations (in transition).

The proponent is aware of sections of the *Bushfires Act 2009* and Regulations that apply to the Project and to address risk and management of fires occurring both within and outside the mine site.

4.4 Northern Territory Policies and Guidelines

4.4.1 Northern Territory Environmental Protection Authority draft Guidelines

On the 31 May 2013 the NT EPA released a series of draft guidelines related to implementation of the Environmental Assessment Act and the *Waste Management and Pollution Control Act 2009*. These are available for comment by the public, community and industry until 15 July 2013. Those draft guidelines potentially relevant to this Project are:

- ▶ *Guidelines for the preparation of an Economic and Social Impact Assessment;*
- ▶ *Guidelines on Environmental Offsets and Associated Approval Conditions;*
- ▶ *Guidelines on Assessment Impacts on Terrestrial Biodiversity;*
- ▶ *Environmental Assessment Guidelines on Acid and Metalliferous Drainage (AMD);*
- ▶ *Environmental Assessment Guidelines – Mining Exploration or production proposals submitted under the Mining Management Act; and*
- ▶ *Guidelines on Conceptual Site Models.*

This Draft EIS was prepared in accordance with the EIS Guidelines issued by the former NRETAS on September 2011, and guidelines available at the time (as below). The draft NT EPA guidelines have not been considered in relation to the Project.

The Department of Land Resource Management (DLRM) has developed standardised methodologies for surveying terrestrial vertebrate fauna and flora in the Northern Territory. These include:

- ▶ *Guidelines and Field Methodology for Vegetation Survey and Mapping* (Brocklehurst *et al.* 2007); and
- ▶ *Guidelines for surveying terrestrial vertebrate fauna in the Northern Territory (Environmental Assessment Guidelines for the Northern Territory: Terrestrial Fauna Survey).*

These guidelines were complied with when undertaking the flora, vegetation and fauna assessments for the Project (Chapters 13 and 14; Appendices M, N and O).

4.4.2 Erosion and Sediment Control Guidelines (NRETAS 2010)

These guidelines provide guidance on the requirement and preparation of an Erosion and Sediment Control Plan, which documents how to minimise soil erosion on, and sediment from, any type of construction site.

The Draft Environmental Management Plan (Appendix Z) outlines erosion and sediment control measures for the Project.

A hydrology assessment was conducted with regard to runoff collection and storm water drainage (Appendix I). Measures will be in place to divert “clean” water around the site to receiving water bodies. “Dirty” water will be collected and treated. Discharge of water from site will be required to comply with an applicable WDL.

4.4.3 Other Guidelines

The following Guidelines and reports may also be applicable to the Project:

- ▶ *Guidelines to Prevent Mosquito Breeding Sites Associated with Mining Sites*, (Medical Entomology Centre for Disease Control 2005) (Chapter 14 and Appendix P);
- ▶ *Requirements for Mining, Construction and Bush Camps (Environmental Health Information Fact Sheet No. 700)* (NT Department of Health 2012). This guideline may be applicable pending determination of the construction camp location and arrangement; and
- ▶ O'Malley, C. (2006). *National Recovery Plan for the Gouldian finch (Erythrura gouldiae)*. WWF-Australia, Sydney and Parks and Wildlife Northern Territory, Department of Natural Resources, Environment and the Arts, Northern Territory Government, Palmerston.

4.4.4 No Longer Applicable

The NT Greenhouse Gas and Climate Change Guidelines and the draft NT Environmental Offsets Policy referred to in the Project's EIS Guidelines (NRETAS 2011) no longer apply to the Project. These issues have, however, been addressed in this Draft EIS. Commonwealth legislation relating to greenhouse gas emissions is addressed in Appendix X. Climate change legislation is addressed in Appendix G.

4.5 Summary of Approvals Required

The Project will require approvals, permits and licences for various components. A summary of the likely approvals required are provided in Table 4-1.

Table 4-1 Likely Approvals, Permits and Licences

Type of Approval	Legislation	Administrator
Environmental Assessment and Management		
Notice of Intent	<i>Mining Management Act 2001 and Mining Management Regulations 2001</i>	DME
Environmental Impact Statement	<i>Environmental Assessment Act 1982 and Administrative Procedures</i>	NT EPA
Approval under the <i>Environment Protection and Biodiversity Conservation Act 1999</i>	<i>Environment Protection and Biodiversity Conservation Act 1999</i>	SEWPaC
Mine Management Plan and Authorisation		
Environmental Mining Report	<i>Mining Management Act 2001 and Mining Management Regulations 2001</i>	DME
Extractive Mineral Permit (for clay extraction)		
Water		
Waste Discharge Licence	<i>Water Act 1992</i>	NT EPA
Wastewater Treatment Licence	<i>Public Health Act 1987 and Regulations</i>	Katherine Town Council
Surface Water Extraction Licence	<i>Water Act 1992</i>	DLRM
Groundwater Extraction Licence	<i>Water Act 1992</i>	DLRM

Type of Approval	Legislation	Administrator
Construct or Alter Works approval (dams / interference with a waterway and roadwork's)		
Heritage		
Aboriginal Areas Protection Authority certificates	<i>Northern Territory Aboriginal Sacred Sites Act 2004</i>	AAPA
Work approval (for removal or damage of archaeological sites and scatters)	<i>Heritage Act 2011</i>	DLPE
Health and Safety		
Dangerous Goods Business Licence	<i>Dangerous Goods Act 1998</i>	NT WorkSafe
Dangerous Goods Vehicle Licence	<i>Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act 2010</i>	NT WorkSafe
Electrical Contractors Licence	<i>Electrical Workers and Contractors Act 1983</i>	Electrical Workers and Contractors Licensing Board, DLPE
High Voltage Operator Appointment	<i>Electricity Reform Act 2000</i> and Regulations	Department of Business
Poisons Licence	<i>Poisons and Dangerous Drugs Act 1983</i>	Department of Health
Accreditations and Certificates of Compliance for radiation sources and storage	<i>Radiation Protection Act 2004</i> and Regulations	Department of Health
Registration of Plant Design		
Registration of Plant Item		
Licence of Major Hazard Facility (Tier 1)	<i>Work Health and Safety (National Uniform Legislation) Act 2011</i> and Regulations (in transition)	NT WorkSafe
Permits for storage, manufacture and use of explosives		
Security Sensitive Ammonium Nitrate Clearance		
Greenhouse Gases		
Reporting under National Greenhouse and Energy Reporting Scheme	<i>National Greenhouse and Energy Reporting Act 2007</i>	IICCS RTE