



Australian Government
Office of Township Leasing

Office of Township Leasing

Engagement Principles



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OTL acknowledges the Traditional Owners and their continuing connection to their ancestral lands, waters and communities. To all Traditional Custodians of Country throughout Australia we pay our respects to their Cultures, Country and Elders both past, present and emerging.

These documents are for official OTL use only and should not be distributed further or used for any other purposes without the prior written approval of OTL.



Preamble

1. The Traditional Owners have agreed to a Township Lease over the Township and for it to be held by the Executive Director of Township Leasing (**EDTL**).
2. The EDTL is responsible for granting subleases and licences within the Township.
3. The EDTL performs her functions in partnership with the Traditional Owners through the mechanism of the Consultative Forum, applying the principles of self-determination in relation to Land development which includes decision making founded on Free, Prior and Informed Consent.
4. These Engagement Principles guide the EDTL partnered approach with Traditional Owners with the intent of enabling fully the exploration and evaluation, against Traditional Owner values and aspirations for the Township.



Engagement Principles

Proposal

- EOI
- Engagement Principles

Due Diligence

- Financial
- Environmental
- Business
- Cultural Integrity
- Regulatory

Evaluation

- Expert Advice - benefits to TOs and risks
- Values Alignment
- Strategic Alignment

Agreement

- Land tenure (Sublease) terms and conditions
- Approvals

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2 Definitions

2.1 In these Engagement Principles unless the context indicates otherwise:

ALR Act means the *Aboriginal Land Rights Northern Territory Act 1976*.

CFM means the Consultative Forum established under the Township Lease.

EDTL means the Executive Director of Township Leasing established under section 20B of the ALR Act and includes any successor entity and assignee of the EDTL's interests in the Township Lease.

Free, Prior and Informed Consent:

Free means that there is no coercion, intimidation, or manipulation.

Prior means that consent is to be sought sufficiently in advance of any authorisation or commencement of activities and respect is shown to time requirements of Indigenous consultation/consensus processes.

Informed means that relevant, accurate information is provided covering all aspects of proposed activities and is delivered in a manner that is accessible, clear, consistent, accurate and transparent.

Consent means consent obtained through consultation undertaken in Good Faith, and in an atmosphere of mutual respect, and equitable participation; in accordance with customary decision-making processes and through nominated representatives and customary or other institutions. Consent may be granted or withheld.

Good Faith means that negotiations are underpinned by the following:

- (a) all parties must act honestly;
- (b) all parties must have regard to the legitimate interests of the other party; and
- (c) neither party must act in a manner which is arbitrary, capricious or intended to cause harm to the other party.

Land Council means the relevant Aboriginal land council established under the ALR Act.

Land Trust means the Aboriginal land trust established under the ALR Act holding the freehold title in the Township.

Meetings means any meetings between EDTL and the Proponent for the purposes of the Engagement.

Engagement Principles means this document, including any annexures, as amended from time to time by the EDTL.

Engagement means any application, discussions, due diligence, meetings or negotiations between the Proponent and EDTL about the Proposed Project or for the purposes of reaching any agreement between them to facilitate the Proposed Project.

Project Area means those areas of land and waters which the Proponent, acting reasonably, requires for the Proposed Project or will be impacted by the Proposed Project.

Proponent means the proponent of the Proposed Project.

Proposed Project means the Project in respect of which the Proponent is requesting a sublease, licence or other right of occupancy to be granted by the EDTL.

Stakeholders includes the EDTL, the Land Trust, the Land Council, the Traditional Owners and others identified by the EDTL from time to time.

Traditional Owners means the traditional Aboriginal owners of the Township.

Township means the Township within which a sublease, licence or other right of occupancy is being sought by the Proponent.

Township Lease means the township lease entered by the Land Trust, Land Council and the EDTL in respect of the Township.

2.2 In these Engagement Principles, unless the contrary intention appears:

- (a) a reference to a person includes a firm, company, body corporate, statutory corporation, an unincorporated association, authority, community or group, whether incorporated or not;
- (b) a reference to a gender includes each other gender;
- (c) the singular includes the plural and vice versa;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes and assigns;
- (e) a reference to anything (including any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (f) a reference to legislation or regulations is a reference to that legislation or regulation as amended or supplemented from time to time and includes any replacement legislation or regulation; and
- (g) "including" and similar expressions are not, and must not be treated as, words of limitation.

3 Background

3.1 The Proponent proposes to carry out the Proposed Project.

3.2 Under the Township Lease, the Land Trust, the Land Council and EDTL have acknowledged that the Township Lease is intended to facilitate the development of the Township and thereby improve the prosperity and wellbeing of its residents.

3.3 The EDTL performs her functions under the Township Lease in close partnership with the Traditional Owners through the CFM.

4 Intent and Purpose

Intent

4.1 These Engagement Principles have been prepared for the EDTL.

4.2 The Engagement Principles are intended to operate as a framework to guide the EDTL in engagement with the Proponent relating to the Proposed Project.

- 4.3 The Engagement Principles are a unilateral statement of intent by the EDTL and will assist to properly inform the CFM, and receive their views as to whether or not the EDTL should grant a sublease or provide any other approvals required to be obtained under the Township Lease in relation to the Proposed Project; including the terms of such grant and/or approvals.

No Agreement

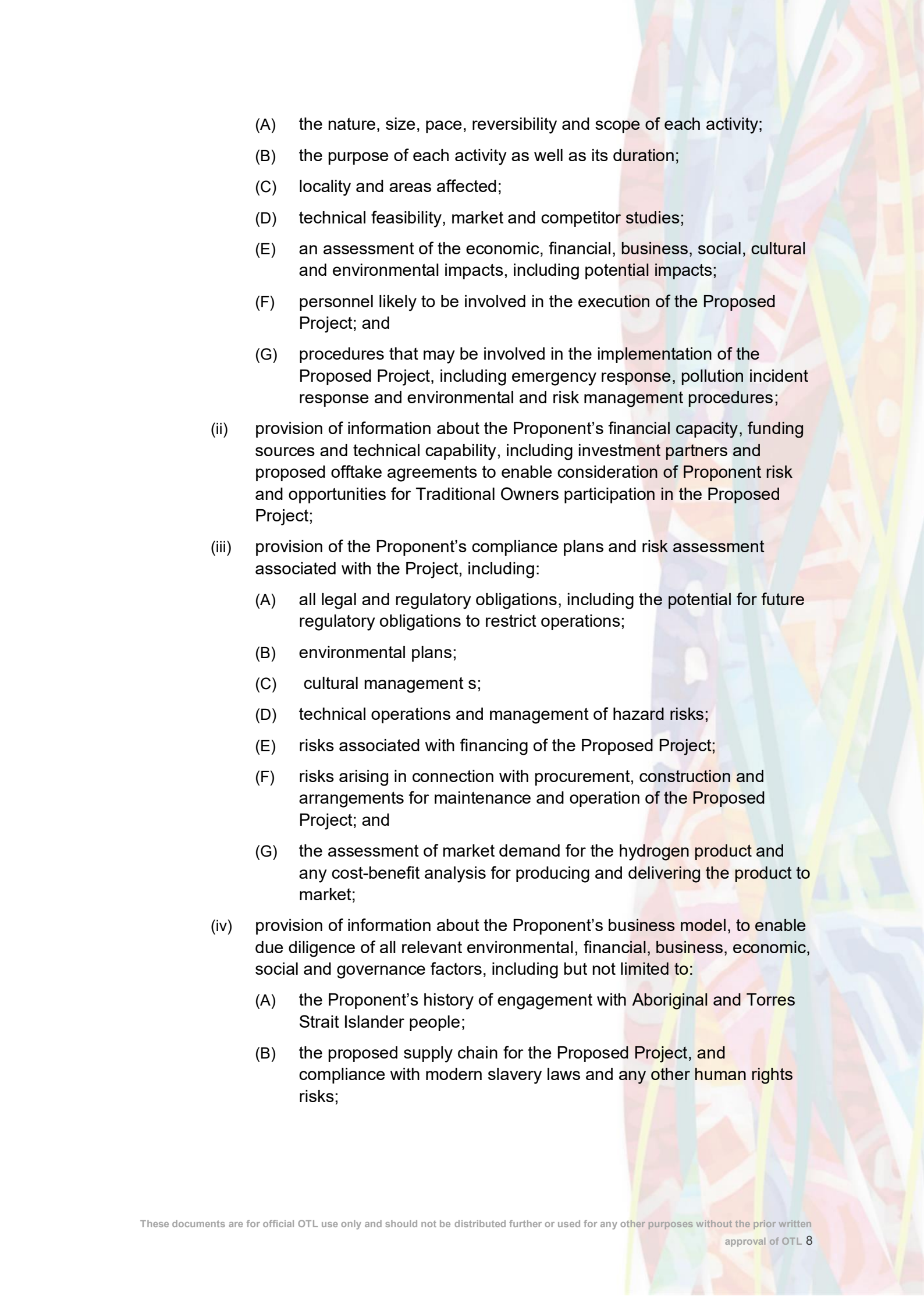
- 4.4 The Engagement Principles are intended to assist the EDTL to explore the potential for facilitating a mutually beneficial sustainable relationship between the Proponent and the Traditional Owners through open and transparent communications and negotiations.
- 4.5 Neither the Engagement Principles nor any communications, negotiations or actions connected to the Engagement Principles give rise to an enforceable agreement, or any legally binding right or obligation, as between any of the EDTL, the Traditional Owners and/or the Proponent.

Purpose

- 4.6 The purpose of this document is to establish principles and an approach that will:
- (a) facilitate engagement between the EDTL and the Proponent relating to the Proponent's request for a sublease and other approvals required to carry out the Proposed Project on the Land;
 - (b) provide access to information and expertise, including but not limited to financial, business, regulatory, and environmental information, to ensure that the Traditional Owners through the CFM are adequately informed about the Proposed Project and are empowered to evaluate the Proposed Project on the Land against their values and objectives, before a sublease is granted and/or construction or operations commence, and during the whole of its life;
 - (c) ensure accurate and up to date information is provided to the EDTL (and Traditional Owners through the CFM) throughout the engagement period;
 - (d) enable exploration of and evaluation of possible opportunities for the Stakeholders relating to participation in employment, training, contracting and other economic development in connection, with the Proposed Project; and
 - (e) provide a structure for the EDTL to determine whether or not to grant a sublease or provide approvals in connection with the Proposed Project.

Duration and Stages of the Proposed Project

- 4.7 The Engagement Principles are intended to apply to, and at, the following stages of the Proposed Project:
- (a) Stage 1: **Access**, involving access to the Land prior to commencement of the Proposed Project, including for the purposes of undertaking preliminary investigation, environmental assessment and/or Planning Approvals.
 - (b) Stage 2: **Due Diligence**, involving:
 - (i) the Proponent providing information about all aspects and activities constituting the Proposed Project, including the provision of meaningful and adequate information relating to:

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- (A) the nature, size, pace, reversibility and scope of each activity;
 - (B) the purpose of each activity as well as its duration;
 - (C) locality and areas affected;
 - (D) technical feasibility, market and competitor studies;
 - (E) an assessment of the economic, financial, business, social, cultural and environmental impacts, including potential impacts;
 - (F) personnel likely to be involved in the execution of the Proposed Project; and
 - (G) procedures that may be involved in the implementation of the Proposed Project, including emergency response, pollution incident response and environmental and risk management procedures;
- (ii) provision of information about the Proponent's financial capacity, funding sources and technical capability, including investment partners and proposed offtake agreements to enable consideration of Proponent risk and opportunities for Traditional Owners participation in the Proposed Project;
 - (iii) provision of the Proponent's compliance plans and risk assessment associated with the Project, including:
 - (A) all legal and regulatory obligations, including the potential for future regulatory obligations to restrict operations;
 - (B) environmental plans;
 - (C) cultural management s;
 - (D) technical operations and management of hazard risks;
 - (E) risks associated with financing of the Proposed Project;
 - (F) risks arising in connection with procurement, construction and arrangements for maintenance and operation of the Proposed Project; and
 - (G) the assessment of market demand for the hydrogen product and any cost-benefit analysis for producing and delivering the product to market;
 - (iv) provision of information about the Proponent's business model, to enable due diligence of all relevant environmental, financial, business, economic, social and governance factors, including but not limited to:
 - (A) the Proponent's history of engagement with Aboriginal and Torres Strait Islander people;
 - (B) the proposed supply chain for the Proposed Project, and compliance with modern slavery laws and any other human rights risks;

- (C) the Proponent's environmental and social record, including records of environmental complaints, proceedings, penalties or prosecutions;
- (D) the proposed customers of the Proposed Project and proposed uses of the product;
- (E) the financial and business capability of the Proponent;
- (F) the viability of the Proposed Project;
- (G) the economic benefits and sustainability of the Proposed Project; and
- (v) provision of any other information EDTL considers relevant to the evaluation of the Proponent and the Proposed Project and the determination of any request for a sublease or other approval under the Township Lease, including any agreements between the Proponent and other Stakeholders associated with the Proposed Project.
- (c) Stage 3, **Evaluation** involving evaluation of the Proposed Project considering information provided by the Proponent in the Due Diligence Stage, advice from third party advisers, and considering the Proposed Project against values and objectives of the Traditional Owners.
- (d) Stage 4, **Agreement Negotiation** involving negotiating and formalising the terms of any agreement, including:
 - (i) any sublease or other approval to be granted by the EDTL under the Township Lease; and
 - (ii) any other agreement required by the EDTL associated with access and occupation of the Land and the ongoing operation of the Proposed Project on the Land.

5 Principles of Engagement

- (a) These Engagement Principles have been informed by international and domestic standards, including the *United Nations Declaration on the Rights of Indigenous Peoples*, and will be applied during all engagement relevant to the Proposed Project:
 - (i) **Free, Prior and Informed Consent:** the Traditional Owners participation in decision-making is to be free of coercion, their consent is to be sought prior to the commencement of the Proposed Project or activities associated with the Proposed Project and the Traditional Owners are to be provided with all relevant information necessary to make informed decisions;
 - (ii) **Good faith:** Engagement is to be conducted in good faith and allow for the full and effective participation of the Traditional Owners in all decisions which directly or indirectly affect them;
 - (iii) **Certainty:** is to be achieved by all known land title and cultural heritage issues for the Proposed Project being resolved prior to the Proposed Project commencing;

- (iv) **Continuous Engagement:** is to be achieved by commencing this Engagement during the early stages of assessment and continuing through all stages of the Proposed Project; and
- (v) **Building and sustaining long-term relationships:** relationships are to be built and maintained between the Proponent and the Stakeholders for the life of the Proposed Project.
- (b) the Engagement must comply with “best practice” principles for agreement making, including the following:
 - (i) Recognition that the Land is subject to the Township Lease and the EDTL performs her functions to grant a Sublease and other approvals regarding use of the Land in accordance with the terms of the Township Lease. Moreover, the Land is freehold title vested in the Tiwi Aboriginal Land Trust under the *Aboriginal Land Rights Northern Territory Act 1976* and the management, control and use of the Land is subject to that Act.
 - (ii) Ensuring the Traditional Owners are resourced to obtain qualified, independent legal, scientific, business, accounting and other advice.
 - (iii) Ensuring that the Traditional Owners are involved in determining the processes, timelines and decision-making structure, including the agenda and nature of negotiations and Meetings.
 - (iv) Negotiating in a respectful and culturally sensitive manner and in Good Faith, noting that cultural protocols are specific to each traditional owner group.
 - (v) Quantifying agreement benefits considering a range of possible benefits including ownership, equity, royalty streams and other aspects of control of the Proposed Project for the Traditional Owners.
 - (vi) Ensuring that there is a whole-of-Stakeholders and whole-of-lifecycle commitment to these Engagement Principles, including engaging in the early planning stage and ensuring that future owners of the Proposed Project accept and adhere to these Engagement Principles.
 - (vii) Should any agreement be reached, ensuring that the agreement is adhered to at the implementation stage and during the life of the Proposed Project, with an understanding that any consent of the EDTL or successor approved entity holder of the Township Lease must be maintained over time.
 - (viii) Adhering to the standard of Free, Prior and Informed Consent when seeking access and use of the Land.
 - (ix) Recognising that the Proponent must obtain a ‘social licence to operate’ that may require actions beyond what is legally required.
 - (x) Recognising that a ‘social licence to operate’, particularly for multi-generational projects, include provision for aspects of any agreement or the Proposed Project to be reviewed from time to time.
 - (xi) Paying attention to and taking account of the priorities of the local community.

- (xii) Operating within a cultural integrity framework by demonstrating with practical actions that the Proponent and operator of the Proposed Project establish and maintain meaningful relationships with, and provide opportunities for, the Traditional Owners and further demonstrating commitment to the relationship through appropriate and relevant cultural integrity training for all staff.

6 Conduct of Engagement

6.1 Representatives

- (a) EDTL's partnering with the Traditional Owners is managed through the CFM. The members of the CFM have confirmed that the EDTL is the contact point for engagement by the Proponent.
- (b) All communications relating to the Proposed Project on the Land must be directed through the EDTL.
- (c) In accordance with the request of the Traditional Owners, the Proponent must not directly contact the Traditional Owners about matters relevant to the Proposed Project on the Land unless invited to do so by the EDTL.

6.2 Good Faith Engagement and Free, Prior and Informed Consent

- (a) Engagement is to be carried out in Good Faith.
- (b) The purpose of Engagement is to provide the EDTL with all information relevant to the Proposed Project, to enable the EDTL to inform the Traditional Owners through the CFM and receive their views on matters related to the Proposed Project, including but not limited to those matters identified in paragraph 7.
- (c) Consent of the EDTL must be obtained prior to carrying out any activities on the Land.
- (d) All engagement activities must be undertaken in accordance with the principles of Free, Prior and Informed Consent and the Proponent must provide all information relevant to the Proposed Project required by the EDTL, including the information outlined at paragraph 3.7(b).
- (e) All parties involved in the Engagement activities must be respectful and mindful of avoiding any conduct which could cause offence, such as intimidating behaviour and bad language.

6.3 Timeframes

Engagement activities are to be conducted within timeframes that:

- (a) are culturally appropriate;
- (b) are in accordance with customary processes; and
- (c) allow the EDTL to inform the Traditional Owners through the CFM to receive, understand, analyse and verify all information relevant to the Proposed Project and to provide their views unencumbered by coercion, expectations or unreasonable deadlines.

6.4 External Facilitation

- (a) During the course of the Engagement, the EDTL may seek assistance from external service providers, including legal and non-legal service providers, and may involve any external representatives in Meetings as required.
- (b) To ensure that the Traditional Owners are appropriately informed, the EDTL expect that the Proponent will provide funding to allow the independent engagement of external advisors to carry out:
 - (i) an independent review of the financial and operational capacity of the Proponent;
 - (ii) an independent review of the business model of the Proposed Project; and
 - (iii) an independent review of the environmental impacts of the Proposed Project.
- (c) Any funding provided by the Proponent under paragraph 5.4(b) above is not refundable by the EDTL or the Traditional Owners and must not be taken to give rise to any enforceable agreement, or any legally binding right or obligation, as between the EDTL, the Traditional Owners and the Proponent.

6.5 **Ongoing Relationships**

The Engagement must have regard to the Traditional Owners traditions and culture, and the importance of relationships, with a view to forming long-term future relationships throughout the life of the Proposed Project through strong legally enforceable mechanisms.

7 Engagement Procedure

7.1 **Steering Group**

- (a) EDTL may seek to establish a Steering Group with representatives of other Stakeholders, CFM members and other interested parties.
- (b) Any agreement reached between members of the Steering Group or during any Engagement activity will be an agreement in principle only until it has been consented to by the EDTL and will not have any binding effect unless and until a formal agreement in writing is duly approved and executed by all parties.
- (c) Members of the Steering Group may participate in Meetings where appropriate.

7.2 **Meeting Schedule**

- (a) A Meeting Schedule is to be established for the conduct of the Engagement.
- (b) The Meeting Schedule must be developed having regard to the need for the EDTL to inform and seek feedback from the CFM on issues to be discussed at the Meetings.
- (c) Cultural responsibilities of the Traditional Owners, weather conditions, obligations of the EDTL or other unknown factors may impact on the progress of the Engagement and there may be a requirement for supplementary or substitution Meetings or amendment to the Meeting Schedule.

- (d) In the event of unforeseen circumstances which arise during the Engagement, the EDTL will, where appropriate, actively seek to re-organise the Meeting Schedule to appropriately reflect the revised circumstances.

7.3 Meetings

- (a) Appropriate permits must be obtained for any Meetings to take place on the Tiwi Islands.
- (b) All attendees at Meetings on the Tiwi Islands must comply with the cultural protocols issued by the Tiwi Land Council.

8 Matters for Engagement

During the Engagement the EDTL and the Proponent (or any other attendee) may discuss the following matters, but may also discuss other matters proposed by any person in attendance at the relevant Meeting:

- (a) temporary access and occupation of the Land for the purposes of carrying out environmental assessment, monitoring and survey;
- (b) access and occupation of the Land for the life of the Proposed Project, including ongoing access to cultural sites by the Traditional Owners;
- (c) management and mitigation of impacts on existing land uses, and impacts on potential future use and economic development of the Land by the Traditional Owners;
- (d) culture and heritage protection, including tangible and intangible cultural heritage and the involvement of Traditional Owners in cultural heritage protection work;
- (e) environmental protection, and management and mitigation of impacts on the environment;
- (f) employment, training and contracting opportunities for the Traditional Owners;
- (g) participation by the Traditional Owners in the Proposed Project;
- (h) financial payments/compensation for occupation of the Land and impacts to cultural heritage, including ownership or equity in the Proposed Project;
- (i) other financial and economic benefits, including support of business development opportunities for the Traditional Owners;
- (j) processes for the implementation of any agreements, including dispute resolution mechanisms;
- (k) ways of ensuring that processes and mitigation measures required for the carrying out of the Proposed Project are properly implemented;
- (l) ongoing monitoring and adaptive management of the Proposed Project, including monitoring undertaken by the Traditional Owners and ongoing engagement with the EDTL throughout the life of the Proposed Project;
- (m) grievance mechanisms and procedures and requirements for responding effectively and in a timely manner to issues raised by the EDTL or successor entity, and the Traditional Owners throughout the life of Proposed Project; and

- (n) liability and financial security to cover liability to restore damage occurring during the life of the Proposed Project and rehabilitation at the end of the Proposed Project's life.

9 Administration

9.1 Records

- (a) The EDTL will be responsible for recording the notes at Meetings.
- (b) At the conclusion of each Meeting, a record of the summary of discussion items and a list of agreed outcomes will be circulated by the EDTL.
- (c) Such summaries of discussion items and lists of agreed outcomes will be kept confidential by the EDTL and the Proponent, in accordance with paragraph 9.1 and subject to paragraph 9.2.
- (d) Notes created during the Meetings do not create commitments, rights, obligations or liabilities.

9.2 Agenda

The EDTL will document and distribute the agenda for the Meeting.

10 Confidentiality

10.1 Engagement to be confidential

Any information provided to or obtained by the Proponent during the Engagement, must be treated as confidential by the Proponent and must not be disclosed to other persons, except:

- (a) in accordance with any prior agreement in writing with EDTL;
- (b) to the extent required by law;
- (c) to the extent required to consult with, or obtain advice from, a third party in connection with the Engagements (provided that any such third party is bound by obligations of confidentiality similar to the obligations set out in these Engagement Principles);
- (d) subject to without prejudice provisions, for the purposes of any administrative or judicial proceedings;
- (e) to the extent that the information is publicly available, as long as such information is not, directly or indirectly, made public by the Proponent, its servants, advisers, contractors, principals or agents; or
- (f) where the information is provided by a third party free of any obligations of confidentiality.

10.2 Traditional Owners and others

- (a) EDTL will inform the CFM about the content and status of the Engagement.
- (b) The EDTL may also disclose the content and status of the Engagement to other Stakeholders, a minister, official, agency or authority of the Commonwealth of Australia, where appropriate.

11 General

11.1 Requirements for agreement

- (a) Any agreement reached during or as a consequence of the Engagement will be regarded as an agreement in principle only until a written document setting out the terms of the agreement is fully executed by all relevant parties.
- (b) These Engagement Principles, and the Engagement will not be construed as admissions of fact or liability in relation to any legal proceeding or process.
- (c) Inclusion of matters in the list for discussions set out at paragraph 7 does not mean the Engagement must include that matter.
- (d) The EDTL, the Traditional Owners, and other Stakeholders are under no obligation to agree to any of the matters in the list for discussions set out at paragraph 7.
- (e) The EDTL may give or withhold any approval sought by the Proponent or may give approval with conditions. Approval may be given or withheld to stages or phases of the Proposed Project as it progresses.

11.2 Construction of these Engagement Principles

- (a) These Engagement Principles are not to be construed as:
 - (i) creating any contract or other relationship under which the EDTL is legally obliged to conduct the Engagement;
 - (ii) operating as a warranty, guarantee or representation by the EDTL about the conduct of, or the outcome of, any Meetings or otherwise by this Engagement; or
 - (iii) establishing any duty of care owed by the EDTL relating to any information provided or discussed by attendees at any Meeting or otherwise during Engagement.
- (b) There are no procedural or substantive limitations on the manner in which the EDTL may conduct the Engagement and the EDTL may terminate any engagement process at any time and for any reason.