



Department of **Energy, Mines,
Industry Regulation and Safety**

Response to submissions

Guidance statement – Use of
'No Mining' conditions under the
Mining Act 1978

December 2024

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Introduction

The 'Guidance statement – Use of 'no mining' conditions under the *Mining Act 1978*' was prepared in response to the Supreme Court's decision in *Blue Ribbon Mines Pty Ltd v Roy Hill Infrastructure Pty Ltd [2022] WASC 362* (Blue Ribbon) that the Minister does have power to impose conditions which prohibit mining or exploration activities upon the grant of an exploration licence.

The guidance statement provided applicants and objectors with information to expedite the Minister's grant of applications that have been recommended for grant through the use of 'no mining' conditions.

A person is entitled to apply for a mining tenement over ground which may be occupied by existing owners and occupiers of land. The application for the mining tenement might give rise to an apprehension of conflicting land uses.

A practice arose to manage land use conflict, and this is currently undertaken by the use of Minutes of Programming Directions (MOPD) which seeks consent of the parties for resolving objections to applications for mining tenements.

In MOPDs, parties can agree to specific conditions and request that the warden recommends an exploration licence for grant together with a recommendation that the agreed conditions be imposed. Specific conditions could include a condition which prohibits mining or exploration activities upon grant of a mining tenement in respect of any area overlapping a miscellaneous licence or private land, or areas adjacent to the overlapping areas. These conditions are known as 'no mining' conditions.

The Department of Energy, Mines, Industry Regulation and Safety (DEMIRS) recommends that parties give consideration to the use of access agreements for resolving objections to applications for mining tenements under the *Mining Act 1978* (the Mining Act) as opposed to relying on the objection process and the use of MOPDs. Access agreements provide both parties with consistency, certainty and flexibility in resolving objections.

The use of a 'no mining' condition is the mechanism by which certain discrete areas of land may be protected within a block of an exploration licence.

DEMIRS proposed the following standard 'no mining' conditions in the consultation version of the guidance statement:

1. No mining within 100 metres of either side and to a depth of 30 metres from the natural surface of the land (being the Consultation Area), of the centreline of *private railway* (and any rail sidings) without the mining tenement holder and the holder of the railway reaching agreement on mining activities to be undertaken within the Consultation Area.
2. No mining on <option-a> without the written consent of the Minister responsible for the *Mining Act 1978*.

(option-a – the area of land to be protected e.g. FNA XXX)

Parties may request the Minister to impose non-standard 'no mining' conditions (through the use of MOPDs) if it is considered that access agreements or standard conditions do not adequately protect their interests. DEMIRS provided grounds to justify using non-standard 'no mining' conditions as part of the guidance statement¹.

Consultation

The 'Guidance statement - Use of 'No Mining' conditions under the *Mining Act 1978*' was made available for public consultation between 17 November 2023 and 9 February 2024. (Together with the 'Review of Standard Conditions for Mining Tenements' and 'Guidance statement – Excisions of area of land upon the grant of an application for exploration licence').

DEMIRS proactively contacted a range of stakeholders to encourage them to provide submissions to the consultation on the review of standard conditions and guidance statements at the start of the consultation period and also undertook information sessions.

An in-person information session was held on Wednesday 6 December 2023 and an online information session was held on Thursday 7 December 2023.

DEMIRS outlined the below options to manage conflicts between applicants for mining tenements and other land uses in order of preference.

1. Access agreements
2. Standard 'no mining' conditions
3. Non-standard 'no mining' conditions

¹ Section 6.3.1 of Guidance statement – Use of 'No Mining' conditions under the *Mining Act 1978*

Consultation was targeted through the Resources Industry Consultative Committee (RICC), key industry bodies, specialist tenement consultant firms, legal representatives, companies, government agencies and other resources industry stakeholders including private railway holders.

At the closure of the public consultation process on 9 February 2024, DEMIRS has received six submissions relating to the proposed standard 'no mining' conditions.

There were two key themes arising out of the submissions received.

Key themes

1. Standard 'no mining' condition to protect private railways

Three out of six submissions received from linear infrastructure holders didn't support the condition to protect private railways that was proposed in the draft guidance statement.

Concerns have been raised by railway operators in relation to the 100 metre 'no mining' zone. BHP and Rio Tinto submitted that the 100 metre 'no mining' zone does not provide adequate protection to existing infrastructure such as fibre optic cables, power supply infrastructure etc.

Further to the above, Eastern Goldfields Prospectors Association (EGPA) submitted that the proposed 'no mining' condition to protect railways with a proposed 100 metre no mining zone is illogical and impractical for existing operations and any future developments.

Further consultation is required prior to imposing a standard 'no mining' condition for the protection of linear infrastructure.

The following condition will not be progressed at this time as the condition has not been supported by industry in its current form:

'No mining within 100 metres of either side and to a depth of 30 metres from the natural surface of the land (being the Consultation Area), of the centreline of *private railway* (and any rail sidings) without the mining tenement holder and the holder of the railway reaching agreement on mining activities to be undertaken within the Consultation Area.'

DEMIRS will undertake further consultation and continue to work with industry and private railway operators to determine a suitable 'no mining' condition with the intent to protect linear infrastructure.

2. Standard 'no mining' condition for the protection of 'other' discrete areas of land

Four out of the six submissions received requested further clarification regarding the purpose of the standard 'no mining' condition for protection of 'other' discrete areas.

DEMIRS acknowledges the submission received from Association of Mining and Exploration Companies (AMEC) regarding the consents under sections 24, 24A and 25 of the Mining Act. In response to the submission, it should be noted that it is not the intention to use 'no mining' condition in Appendix 2 for reserved lands. The practice for reserved lands is outlined in part 6.2.2 of the guidance statement.

The Minister has powers under the Mining Act to impose any conditions as the Minister sees fit. The Minister would be imposing a 'no mining' condition over an area defined by a File Notation Area (FNA) with an active status in the TENGRAPH electronic plan (TENGRAPH) of DEMIRS.

Should the FNA no longer be required and become inactive in TENGRAPH then the 'no mining' condition would become redundant and unenforceable as there is no longer an active FNA in place.

For example, where an active FNA has been created for a national park and that national park has been created, the Minister would be able to approve mining over the formerly active FNA area as the FNA would now be inactive. The national park would then be protected and subject to sections 24 and 25 of the Mining Act.

A 'no-mining' condition is applied to active FNA areas where DEMIRS has provided clearance under s16(3) of the Mining Act.

DEMIRS will proceed to implement the following standard 'no mining' condition over active FNA areas:

No mining on land designated as active <option-a> in the TENGRAPH electronic plan of the Department of Energy, Mines, Industry Regulation and Safety, without the written consent of the Minister responsible for the *Mining Act 1978*.

(option-a – File Notation Area (FNA) XXX).

Response to submissions

Please see Annexure A.

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Ref #	Stakeholder	Comment	DEMIRS Response
1	Fortescue Ltd	<p>a) Private railways Paragraph 6.2.1 of the Guidance Statement notes that a standard 'no mining' condition will be imposed on the grant of any tenement that encroaches on private railways; Fortescue queries whether DEMIRS has given consideration to imposing further standard conditions to protect railways granted pursuant to State Agreements and Special Railway Licences (i.e. similar to those that apply to railways operating under the <i>Railway Freight Systems Act 2000 (WA)</i>). As a result, it is likely Minutes of Programming Direction will continue to be utilised for the protection of private railway infrastructure. Fortescue requests consultation on a further standard condition relating to the protection of private railway infrastructure.</p> <p>b) File Notation Areas Paragraph 6.2.2. of the Guidance Statement states that the Minister would be able to protect certain areas of land by imposing a standard 'no mining' condition over that land identified as a File Notation Area (FNA). This proposed standard 'no mining' condition states that no mining can be carried out on the relevant FNA without the consent of the Minister. Fortescue is concerned that:</p> <ol style="list-style-type: none"> 1. the Minister's consent may be granted without the underlying tenement holders and infrastructure owners being notified and consulted appropriately; 2. by linking the 'no mining' condition to an FNA description, the condition may only be enforceable with the sound registration and upkeep of the FNA record (outside of the underlying tenement holder's control), rather than being linked to the underlying tenement holder's affected tenure asset (within the underlying tenement holder's control); 	<p>a) Appendix 2 of the 'Guidance Statement – Use of 'No Mining' conditions under the <i>Mining Act 1978</i>' proposes to address the protection of private railways. However, as support to this proposed condition has not been agreed to by private railway holders it will not be imposed at this time. DEMIRS will continue further discussions with private railway holders to determine a satisfactory standard no mining condition for the protection of private railways.</p> <p>b) 1–3 – The guidance statement provides an option to potentially include a 'no mining' condition over land that has been identified using an active FNA, it does not affect the current process of identifying land using an FNA. Should the FNA no longer be required then the 'no mining' condition would become redundant and unenforceable as there is no longer an active FNA in place.</p> <p>b) 4 – The guidance statement notes in the scope of the document that it does not include other conditions including those imposed following approval of exploration and mining activities on a tenement under the 'conditions for preventing or reducing injury to the land' provisions of the <i>Mining Act 1978</i>, including section 63AA.</p> <p>Please see key theme 2 at page 5 of the <i>Response to submissions</i> for further information in relation to the 'no mining' condition for the protection of 'other' discrete areas of land.</p>

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Ref #	Stakeholder	Comment	DEMIRS Response
		<p>3. where the intent of an established 'no mining' FNA is no longer required (for example, the overlap area ceases to exist) the 'no mining' condition will still apply and need to be formally addressed unless the register upkeep is maintained; and</p> <p>4. Section 63AA of the <i>Mining Act 1978 (WA)</i> allows for a condition preventing or reducing injury to land to be cancelled or varied by the Minister at any time, which could include the 'no mining' condition associated with an FNA.</p> <p>Fortescue requests further information from DEMIRS to better understand:</p> <ol style="list-style-type: none"> 1. The guidelines for establishing and maintaining an FNA area, including the extent of consultation and consent with the affected party. 2. The guidelines which will be followed to enable the granting of the Minister's consent over a 'no mining' area, including the extent of consultation and consent of the affected party to that process. 3. The guidelines for a 'no mining' condition to be varied or cancelled by the Minister pursuant to section 63AA, including the extent of consultation and consent of the affected party. 4. The process of maintaining the FNA for 'no mining' areas, including expiration of such FNAs that are no longer active or applicable due to boundary reductions. 	<p>Fortescue Ltd request for further information in relation to 1–4. As noted above, DEMIRS will undertake further discussions with railway holders.</p>

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Ref #	Stakeholder	Comment	DEMIRS Response
2	BHP Billiton Group Operations Pty Ltd.	<p>1. <u>Imposing 'no mining' conditions (item 6.1)</u></p> <p>The draft guidance statement provides that DEMIRS will consider imposing a 'no mining' condition where an application overlaps 'significant project infrastructure', 'an existing or proposed State significant project', 'a proposal for a change of land tenure', a private railway, or where 'insufficient protection [is] provided by the Mining Act or other legislation'.</p> <p>It is unclear what 'significant project infrastructure' comprises in this context, and whether it would capture infrastructure, such as power transmission lines, pipelines and roads. It is also unclear what comprises 'a proposal for a change of land tenure'. For greater certainty of DEMIRS' position, these items should be clarified in the guidance.</p> <p>2. <u>Protection of private railways (item 6.2.1 and Appendix 2)</u></p> <p>DEMIRS proposes the following 'no mining' condition for tenements that overlap private railways:</p> <p>No mining within 100 metres of either side and to a depth of 30 metres from the natural surface of the land (being the Consultation Area), of the centreline of [private railway] (and any rail sidings) without the mining tenement holder and the holder of the railway reaching agreement on mining activities to be undertaken within the Consultation Area.</p> <p>In our submission, 100 metres of either side is insufficient. BHP typically requires 'rail safety zone' distances of up to 500–900 metres either side to protect railways from blasting activities, unless BHP's prior consent is given on a case by case basis. In our submission, as drafted the 100 metre no mining zone falls short of providing the protection required. We would like to see a range of potential distances imposed, up to 1km, in consultation with the holder of the railway.</p>	<p>1. A 'significant project infrastructure' may be assessed on a case-by-case basis by DEMIRS. Consideration may also take into account any potential interference of such a power transmission line/pipeline/road etc. A proposal for a change of land tenure would also be considered on a case by case basis and could take into account land committed for future national parks (for example).</p> <p>2. The proposed use of a standard non-mining condition for the protection of private railways will not be progressing at this time as DEMIRS has not received support of this proposed condition.</p> <p>DEMIRS will engage further with private railway holders to prepare a condition which provides adequate protection for private railways to reduce objections being made.</p> <p>3. There would be no buffer zone around the active FNA. The no-mining condition would apply to the actual active FNA area.</p> <p>4. Noted, reasonable information is required for the use of a non-standard 'no mining' condition in MOPDs. The Minister has discretion in determining decisions; it would not be appropriate to fetter or otherwise limit the Ministers discretion by imposing time limits through departmental guidance document.</p> <p>Please see key themes 1 and 2 at page 5 of the <i>Response to submissions</i> for further information in relation to the 'no mining' condition for the protection of 'other' discrete areas of land.</p>

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Ref #	Stakeholder	Comment	DEMIRS Response
		<p>3. <u>Using standard 'no mining' conditions in other situations (item 6.2.2 and Appendix 3)</u></p> <p>Where an application overlaps with one of the types of land listed in item 3 (other than private railways), DEMIRS will impose the following standard 'no mining' condition:</p> <p>No mining on [the area of land to be protected e.g. FNA XXX] without the written consent of the Minister responsible for the <i>Mining Act 1978</i>.</p> <p>It is unclear whether this 'no mining' condition would impose a buffer zone around the land or infrastructure that it is seeking to protect. As per our comment at paragraph 1 above, it is also unclear whether 'no mining' conditions could be imposed to protect transmission lines, pipelines, roads or other infrastructure, which in our submission, they should be, on a case by case basis.</p> <p>4. <u>Using non-standard 'no mining' conditions in MOPDs (item 6.3)</u></p> <p>This item provides that parties may apply to the Minister to have a non-standard 'no mining' condition imposed, and will be required to make a submission to the Minister containing the information set out in item 6.3.1. In our view, this information is reasonable, but may be time consuming if parties need to make frequent requests for the imposition of non-standard 'no mining' conditions. This may mean the provision is underutilised as parties will seek to agree similar terms in a commercial agreement instead. It would be useful to understand the Department's expected timeframe for the Minister to consider and respond to submissions.</p>	

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Ref #	Stakeholder	Comment	DEMIRS Response
3	EGPA	<p>1. Your draft guidance material advocating “land access agreements that may contain compensation” should be deleted from your documents, otherwise DEMIRS is forcing applicants into having access deeds without the legal requirement to do so.</p> <p>2. STANDARD NO MINING CONDITIONS.</p> <p>EGPA have no objection to warden implementing or determining standard reasonable mining conditions.</p> <p>The Standard proposed no mining condition, as in your appendix 2 for the protection of private railways, is not supported by EGPA. Govt railways may be privatised in the future and then current operations adjacent to the privatised railway will be effectively sterilised from this proposed standard condition. Examples of railways being close to mining operations include Bardoc, Sons of Gwalia, Golden Ridge, Coolgardie, Kalgoorlie Boulder, Malcolm, The Super Pit Operations and Koolyanobbing, to name a few.</p> <p>The proposed new 100m arbitrary no mining condition from the centre of the railway is illogical and impractical for existing operations and any future developments.</p> <p>The Standard proposed no mining condition for “other” discrete areas of land, as in your appendix 3, via FNA is also not supported. This is a very concerning and dangerous proposal, as for example, conservation areas, carbon farming areas, alternative energy projects and any other forms of infrastructure. This proposal of FNA's goes totally opposite to the objects of the mining act, and if implemented, will most likely be abused within the Department.</p> <p>Another example, the Great Western Woodlands, also now known as GoldFields Woodlands, was previously shown on Tengraph as a massive FNA area without any form of consultation to existing tenement holders or other land holders.</p>	<p>1. DEMIRS notes EGPA comments relating to the definition of an Access Agreement in Appendix 1: Glossary of the <i>Guidance Statement – Use of ‘No Mining’ conditions under the Mining Act 1978</i>. The definition will be amended as follows;</p> <p><i>A land access agreement is negotiated between an applicant for a mining tenement and a landholder or occupier (usually an objector to the application for that mining tenement) relating to access rights to the land and any other clauses the parties may determine applicable.</i></p> <p>2. The proposed use of a standard non-mining condition for the protection of private railways will not be progressing at this time as DEMIRS has not received support of this proposed condition. DEMIRS will continue further discussions with private railway holders to determine a satisfactory standard no mining condition for the protection of private railways.</p> <p>Not every FNA will have a no-mining condition on it. Please see key themes 1 and 2 at page 5 of the <i>Response to submissions</i> for further information in relation to the ‘no mining’ condition for the protection of ‘other’ discrete areas of land.</p>

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Ref #	Stakeholder	Comment	DEMIRS Response
		<p>1. NON-STANDARD NO MINING CONDITIONS</p> <p>We reiterate and remind ourselves all land in WA is open to mining and exploration, and permanently sterilising (locking out), ground through no mining conditions does not promote the objects of the WA Mining Act, i.e. defeats the very intention of the <i>WA Mining Act 1978</i>.</p>	<p>3. Non-Standard no mining condition:</p> <p>DEMIRS acknowledges and understands EGPA concerns. A non-standard 'no mining' condition may still be imposed by way of a MOPD. The guidance statement outlines the grounds on which the parties must meet and consider prior to submitting such a non-standard 'no mining' condition to the Minister for Mines and Petroleum. The approval to impose a non-standard 'no mining' condition will be at the discretion of the Minister for Mines and Petroleum as the decision maker.</p>
4	The Chamber of Minerals & Energy of Western Australia (CME)	<p>1. CME members have shared a range of views regarding the scope of the 'no mining' condition, which would be applied within 100 meters of either side and to a depth of 30 meters from the natural surface of the land (being the Consultation Area), of the centreline of the railway.</p> <p>These views include concerns that the limits currently drafted in the 'no mining' standard condition, do not sufficiently protect parallel infrastructure, such as fibre optic cables, power supply infrastructure, signalling, communication and siding infrastructure, and may impact future infrastructure development. However, some members have also highlighted the negative impact on their mining operations, should a 'no-mining' standard condition be applied, given the proximity of their mining operations to railways.</p> <p>The CME recommends that DEMIRS consult further with affected parties specifically on the issue of the 'no-mining' standard condition, to ensure a balanced outcome.</p> <p>2. The CME also recommends that tenement holders' rent should be calculated, excluding any area that is subject to a 'no-mining' condition. Consequently, tenement holders would not be required to pay rent for areas they are prohibited from mining on.</p>	<p>1. DEMIRS acknowledges CME's recommendation that DEMIRS consults further with affected parties in relation to the standard 'no mining' condition. The proposed use of a standard non-mining condition for the protection of private railways will not be progressing at this time as DEMIRS has not received support of this proposed condition.</p> <p>Please see key theme 1 at page 5 of the <i>Response to submissions</i> for further information in relation to the 'no mining' condition for the protection of 'other' discrete areas of land.</p> <p>2. This is not within the scope of this guidance statement and such changes in calculating rent would required legislative amendment.</p>

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Ref #	Stakeholder	Comment	DEMIRS Response
5	AMEC	<p>Will no mining conditions be successful?</p> <p>The no-mining conditions proposed will be successful if:</p> <ul style="list-style-type: none"> - they are supported by the owners of Western Australia’s major linear infrastructure (for example, private railways and pipelines); and - the linear infrastructure owners do not object to tenure based that overlaps linear infrastructure and are willing to rely on the standard conditions. <p>DEMIRS must satisfy themselves completely that the above two conditions are met prior to introducing a further administrative burden to the Western Australian mining and exploration sector. If these two conditions are not satisfied the Government should move immediately to legislate amendments to the Exploration Licenses to allow excision of tenure.</p> <p>AMEC is concerned that the owners of linear infrastructure are unlikely to support no mining conditions due to uncertainty regarding future tenure use. Consequently, the intent of the Government to streamline the grant of tenure appears unlikely to be met. The following comments have been received from Industry.</p> <p>Implementing a standard no mining condition</p> <p>It has been raised with AMEC by Industry that DEMIRS should consider paragraphs at and around paragraph 214 of the Blue Ribbon decision in parallel with a reading of the object of the Mining Act.</p> <p>With the decision stating the legality of condition placed on tenure must be assessed on a case-by-case basis according to the factual circumstances applying to the particular tenement application. This undercuts the use of standard conditions, which AMEC support as a principle. Answering the concerns with the matters raised in paragraph 214 would be welcome.</p>	<p>Will no mining conditions be successful?</p> <p>DEMIRS agrees that the proposed ‘no mining’ condition must be satisfied completely prior to being imposed. The proposed use of a standard non-mining condition for the protection of private railways will not be progressing at this time as DEMIRS has not received support of this proposed condition.</p> <p>Implementing a standard no mining condition:</p> <p>DEMIRS has looked at the principles in Blue Ribbon and the guidance statement reflects DEMIRS considered view of the application of those principles.</p>

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Ref #	Stakeholder	Comment	DEMIRS Response
		<p>Unintended consequences: all access</p> <p>Industry feedback has highlighted that mining, as defined in the Mining Act, includes fossicking, prospecting, and exploring for minerals. As such, the application of a standard 'No Mining' condition would prevent even crossing over the area of land where the condition applies.</p> <p>Unintended consequences: nonground disturbing surveys</p> <p>There are many instances where 'Mining' activities include non-ground disturbing and unlikely to have any detrimental impact on the infrastructure sought to be protected by the condition. Sterilisation of large areas (i.e. 200m corridors for hundreds kilometre the length of the numerous railways) would inhibit compilation of full data sets, including geological mapping, environmental and heritage surveys etc which could potentially impact or unduly complicate development of nearby resources. The potential for such unintended consequences cannot be in the best interests of resource development for the State.</p> <p>Unintended consequences: Natural Justice</p> <p>Inclusion of a 'No Mining Condition' as a Standard Condition where there has been no objection by the railway tenure holder could result in the tenement holder having no recourse (i.e. in the Wardens' Court) to justify the need for any proposed activities on the excluded area (e.g. for crossing a railway as universally provided for under State Agreements) or to argue that such activities will not unduly interfere or impact State Agreement infrastructure or activities. In circumstances where the relevant interest holders are in agreement about what/where/how 'mining' can be undertaken in an overlap area, the imposition of the condition would nullify that agreement, preventing the mining activities being conducted by the tenement holder as agreed between the parties.</p>	<p>Unintended consequences: all access.</p> <p>DEMIRS agrees with the comment.</p> <p>Unintended consequences: nonground disturbing surveys</p> <p>DEMIRS agrees with the comment made under the heading and considers that this is a direct consequence of implementing a 'no mining' condition.</p> <p>Unintended consequences: Natural Justice</p> <p>Noted, on the assumption that DEMIRS imposes a standard 'no mining' condition, which at this time will not be progressing.</p>

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		<p>Appendix 3 File Notation Areas</p> <p>In Guidance Statement – use of No Mining Conditions under the <i>Mining Act 1978</i> Appendix 3, Industry has identified concern that the proposed standard condition may not be implementable as the Minister does not have the power to provide consent under Sections 24, 24A or 25 of the Mining Act for File Notation Areas. As the FNA area cannot be reincluded back into the title for exploration later.</p> <p>A possible solution for a FNA that was raised was whether DEMIRS will consider a “no mining” condition that does not relate to the consent of the Minister, perhaps comment from the vesting authority instead? However, this may be ultra vires.</p> <p>Lack of remedy if a Standard Condition in place</p> <p>The application of a no mining condition creates a potential problem for a linear infrastructure hold that there is a lack of means to remedy any damage done to the area covered by the no-mining condition. AMEC notes that the ‘make good’ provisions would apply, which AMEC supports.</p> <p>However, making good is not the quantum currently expected by linear operators that damage would cause.</p>	<p>File Notation Areas:</p> <p>Please see key theme 2 at page 5 of the <i>Response to submissions</i> for further information in relation to the ‘no mining’ condition for the protection of ‘other’ discrete areas of land.</p> <p>Lack of remedy if a standard condition in place</p> <p>Noted.</p>

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6	Rio Tinto	<p>Blue Ribbon did not expressly consider whether such ‘no mining’ conditions could be imposed on other types of tenure beyond exploration licences, however, it appears DEMIRS has taken the position that a standard ‘no mining’ condition in the form set out below can be applied to any tenure.</p> <p>Appendix 2: Standard ‘no mining’ condition for the protection of private railways</p> <p><i>The following standard condition will be imposed by the Minister’s delegate or the Mining Registrar as the case may be on the grant of any mining tenement that encroaches on a private railway:</i></p> <p><i>No mining within 100 metres of either side and to a depth of 30 metres from the natural surface of the land (being the Consultation Area), of the centreline of (and any rail sidings) without the mining tenement holder and the holder of the railway reaching agreement on mining activities to be undertaken within the Consultation Area.</i></p> <p><i>(option-a – private railway)</i></p> <p>Rio Tinto has concerns about the lack of rationale behind the inclusion of a 100 metre buffer zone and a depth limit of 30 metres (being the Consultation Area) in the Standard ‘no mining’ condition for the protection of private railways as further detail regarding the choice of distance has not been adequately provided. Rio Tinto believes that the Consultation Area would inadequately protect the interests of private railway holders based on experiences Rio Tinto has encountered.</p> <p>Rio Tinto operates approximately 2,000 kilometres of integrated heavy haul railway in the Pilbara. As a result of Rio Tinto’s method of operations the railway is considered process infrastructure rather than a means of transport. Approximately 93% is operated autonomously utilising our AutoHaul® system with some 200 driverless trains being operated remotely from our operations centre in Perth. The AutoHaul® system has many technical and operational nuances and this combined with the scale of operations makes it unique globally. There are no other comparable railways being operated in the Pilbara.</p>	<p>Noted. Blue Ribbon applies more broadly than just exploration licences. The proposed use of a standard no-mining condition for the protection of private railways will not be progressing at this time as DEMIRS has not received support of this proposed condition. DEMIRS will continue further discussions with private railway holders to determine a satisfactory standard no mining condition for the protection of private railways.</p> <p>Please see key theme 1 at page 4 of the <i>Response to submissions</i> for further information in relation to the ‘no mining’ condition for the protection of ‘other’ discrete areas of land.</p>

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Ref #	Stakeholder	Comment	DEMIRS Response
		<p>DEMIRS refers to parties reaching commercial agreement via an Access Agreement and/or the use of non-standard 'bespoke' conditions to protect private railways if the standard 'no mining' condition is not suitable. However, if the parties cannot reach a commercial agreement or agree on a non-standard bespoke condition the proposed standard 'no mining condition' could be imposed as a default condition.</p> <p>An example of where this could be problematic is where a Mining Lease could have the standard 'no mining' condition imposed over a private railway such as Rio Tinto's. Substantial mining activities could take place within close proximity to that railway over ongoing periods of 21 years which could have a detrimental impact on the operation of the railway, including additional safety risks for the Rio Tinto personnel that support the railway. The standard 'no mining' condition doesn't contemplate the unique operating conditions of the Rio Tinto railway and would provide Rio Tinto with no recourse.</p> <p>Given Rio Tinto's unique position in how it operates it's railways in the Pilbara, we recommend there not be a standard 'no mining' condition to alleviate the risk associated with the default imposition of the proposed standard 'no mining' condition. The relevant decision maker may give consideration to the imposition of non-standard 'bespoke' conditions if deemed appropriate in the circumstances to impose such conditions.</p>	

Government of Western Australia

**Department of Energy, Mines, Industry Regulation
and Safety**

8.30am – 4.30pm

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