Wildlife Preservation Society of Qld
Sunshine Coast & Hinterland

PO Box 275 Caloundra Qld 4551
Phone/Fax: 0754 442 707
sunshine@wildlife.org.au

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The Agriculture, Resources and Environment Committee
arec@parliament.qld.gov.au

Dear Committee,

Re: North Stradbroke Island Protection and Sustainability and Another Act Amendment Bill 2013

We object to the proposed amendments to the North Stradbroke Island Protection and Sustainability Act 2011. (NSIPS)

This Act came in to force to enable the phase out of sand mining, to rehabilitate sand mining operations and to increase the area designated as National Park, in order to encourage nature based recreation, tourism and education.

To permit the renewal and extension of mining leases, is a retrograde step.

Hereunder some comments on the Explanatory Notes.

In regard to the Objectives of the proposed Bill, it is our opinion that:

1 (a) The mining lease at the Enterprise mine should only be renewed from 2019 to 2024, a time period of five years, for the sole purpose of rehabilitation under a non-winning condition.

1 (b) The restricted mine path and non-winning condition over part of the Enterprise mine should remain. There is significant vegetation of high conservation value on site, which must be protected, and this was the intention of the NSIPS Act.

1 (c) The renewal of the Yarraman mine lease should only be for a period of five years from 2015, under a non-winning condition, in order to rehabilitate the site.

On the subject of concerns re the possible harm to Queensland's reputation in relation to sovereign risk, it is our belief that the mining company has time to restructure their operations to cover the closure of the Enterprise and Yarraman mines.

The company has been operating under the terms of the NSIPS Act since 2011, and, presumably, has factored those time frames into their future strategies.

As proposed, the Vance mine will remain operational until 2025, with the intention of a renewal to 2030 for the purpose of rehabilitation only.

This will still provide employment on the Island, and provides a time frame for the company to restructure its operations and future commitments.

The NSIPS Act was gazetted in 2011, which is a short time frame to date for the consideration and implementation of alternative economic activities to replace the phase out of mining activity. There is no reason to believe that such activities will not become established in the next few years, especially that it appears that there is an upturn in investor confidence.

With the declaration of extended areas of National Park, there are increased opportunities for nature based recreation, ecotourism and environmental education, as was the intention of the NSIPS Act.

The more so, since the enactment of the *Nature Conservation and Other Legislation Amendment Act 2012*, and the *Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013*.

Nature based activities can occur within a short time frame.

We maintain that the perceived threat of de-population, less demand for ferry services, increased electricity and fuel costs, etc., due to the cessation of mining, is not necessarily likely to occur.

North Stradbroke Island has always been a popular tourist destination and will continue to be so, probably with an increased visitation rate once mining is phased out, and there is more emphasis on nature based recreation and allied industries as was the intention of the NSIPS Act..

There is mention that mining will cease under the current framework by 2019. This surely applies only to the Enterprise and Yarraman mines. The Vance mine, as we understand, is scheduled to continue until 2025, with a possible extension to 2030 for the purpose of rehabilitation only, and will still continue to provide employment.

There is also the opportunity for continuing employment in the rehabilitation of the two, eventually three, mines.

Whether legislation has sufficient regard to rights and liberties of individuals- Legislative Standards Act 1992 s 4(3)

We have concerns over Clause 12 of the Bill which is proposed to insert a replacement section 17 into the NSIPS Act, replacing the existing Environment Authority(EA) with a new EA which is a schedule to the Bill, and which applies to the majority of sand mining on North Stradbroke Island.

Making a replacement EA by means of a schedule to the NSIPS avoids public notification under the Environment Protection Act.

As stated, *arguably this is a breach of section 4(3) of the Legislative Standards Act 1992, which provides that legislation should have sufficient regard to rights and liberties of individuals.*

We disagree with the following statement: *these matters are not of sufficient magnitude to necessitate a public consultation process.*

We feel that it is imperative that such matters be the subject of public consultation under the provisions of the *Legislative Standards Act 1992 s 4(3**),*** not lightly dismissed by the statement that: *it will be open to the public to make comment on it during the Parliamentary Committee inquiry into the Bill and is subject to scrutiny by members of Parliament during debate on the Bill.*

Whether legislation ensures that the rights and liberties, or obligations, should be dependent on administrative power only if the power is sufficiently defined and subject to appropriate review - Legislative Standards Act 1992 s 4(3)(a)

Clause 9 of the Bill inserts a new section 11F into the NSIPS Act that provides that no appeal, including judicial review, can be made against the decision of the Minister to renew certain mining leases under the NSIPS Act

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It is also *arguable that the removal of appeal rights is in breach of section 4(3)(a) of the Legislative Standards Act 1992, which provides that rights and liberties, or obligations, should be dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.*

The amendment is apparently justified by the need to balance the rights of an individual against the rights of the NSI community and region as a whole.

It is our opinion that neither the power nor the "appropriate review" are sufficiently defined, nor what constitutes "appropriate review". Therefore the removal of appeal rights, notwithstanding the 'rights' of the NSI community, is in breach of section 4(3)(a) of the Legislative Standards Act 1992.

Whether legislation has sufficient regard to the right to ecologically sustainable development -Legislative Standards Act 1992s 4(2)

The Bill will enable mining to continue at the Enterprise mine until 2035 and will remove the restricted mine path from that mine. We have already expressed our concerns above regarding those matters.

We feel that the extension of mining <u>will</u>, not '*may*', have an impact on an individual's right to ecologically sustainable development.

We deplore the lack of public consultation on this Bill. There should have been opportunities for all interested parties to discuss the intended ramifications of the Bill.

New section 11C – application for renewal of mining leases

We note that mining leases are not automatically renewed under this Bill, but are predicated upon the making of a properly made application to the Minister under the NSIPS Act, which overrides any requirements of the *Mineral Resources Act 1989.(MRA).*

This means that any requirements or prohibitions under the MRA on renewals of mining leases are totally bypassed and negated under the various parts of new Section 11 of the NSIPS Act.

In our opinion, this makes a mockery of the MRA, which we understand was intended to provide checks and balances to ensure that mining activities are carried out in a sustainable manner in regard to environmental concerns.

We object to new section 11 F, which excludes any challenge, appeal, or review of the decision of the Minister to grant a renewal, or the conditions attached to that renewal under new section 11D. (Minister renews mining lease).

There must be allowable provisions for appeal, again *to protect the rights and liberties of an individual.*

We have noted that the new section does, however, recognise the continued availability of review on the grounds of jurisdictional error, a precedent having been set, as quoted in the Notes - a*s decided by the High Court in Kirk v Industrial Relations Commission of NSW & WorkCover NSW [2010] HCA 1,* which found that this type of review cannot be removed for constitutional *reasons.*

We have concerns over new section11G, which *provides for the continuation of a mining lease while a properly made application for renewal of that mining lease under this Act is being dealt with. Where that mining lease would expire on its terms and the holder continues to pay rental on the lease and comply with the requirements of the MRA* (under which the original lease was granted) *and the lease conditions the lease continues. The continued lease remains subject to the rights, entitlements and obligations that applied before the lease expired until the application is withdrawn or granted.*

This could mean that the original lease would continue on past its end by date, under its original conditions, due to delays in the processing of the new application.

New section 11J - Application of Mineral Resources Act not limited

New section 11J clarifies that the renewal of a mining lease under new section 11D does not limit the application of the MRA to the renewed mining lease despite the renewal of the lease occurring under this Act.

This section appears to be in conflict with new section 11C.

Amendment of s 15 (Purpose of div 3)

We note that *Clause 11 amends section 15 to identify that the purpose of the division is to provide for the replacement and further amendment of a particular environmental authority for mining on NSI.*

Clause 15 also omits the definition of ‘environmental authority’ in the Dictionary. Does that mean further erosion of environmental protection measures and safeguards?

This certainly appears to be the case by the proposed amendments to the Vegetation Management Framework Amendment Act 2013. (VMFAA)

Section 47 of the VMFAA is apparently to be amended to omit new sections of the Vegetation Management Act 1999, whereby applicants have to provide details of how they propose to minimise or mitigate against the adverse impacts of clearing 'endangered' and 'of concern' regional ecosystems as part of the suitable application test.

We note that the State Development Assessment Provisions (SDAP) performance outcomes normally require the applicant to provide this information by way of either detailing a Significant Benefit Interest or an offset.

In order to reduce the regulatory burden on applicants, the impacts of clearing 'endangered' and 'of concern' regional ecosystems are apparently to be assessed under the SDAP *consistent with other assessable development involving vegetation clearing.*

This appears to provide minimal protection against the clearing of regional ecosystem vegetation classified as 'endangered' or 'of concern'.

Why remove 'new' sections of the VM Act when they have only recently been enacted?

We ask you to take these concerns into consideration when debating these proposed amendments and making recommendations.

Yours sincerely,

Jill Chamberlain OAM
President