



Friends of Stradbroke Island Association Inc.

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28 October, 2013

Mr Ian Rickuss MP
The Chairperson
Agriculture, Resources and Environment Committee
Parliament House
George St
Brisbane 4000

BY EMAIL

Dear Mr Rickuss,

Submission on the North Stradbroke Island Protection and Sustainability and Another Act
Amendment Bill 2013

The committee's webpage concerning parliament's 17 October, 2013 referral of the Bill to the committee states:-

"The committee will examine the policies the Bill seeks to give effect to, the Bill's lawfulness, and the application of fundamental legislative principles, as set out in section 4 of the Legislative Standards Act 1992".

Introduction

This submission is by Friends of Stradbroke Island (FOSI) a voluntary community group established for 25 years with a broad membership of North Stradbroke Island inhabitants, ratepayers, business operators and visitors which aims to protect the island's special natural and urban environments.

The submission addresses each of the three issues being examined by the committee, relating to the proposed extension of sand mining. We make significant reference to what will be serious broken promises by the Premier if the Bill is enacted. It may surprise, but we rely on the Premier's own words when he announced his policy in January, 2012. We invite the committee to listen to the radio interview. Audio and written transcripts are **attached**.

We find it incredible that in 2013 the second largest sand island in the world is continuing to be treated in such a contrasting way to the largest sand island, Fraser Island. In 1976 the Fraser government accepted that sand mining causes, in the words of Prime Minister, Malcolm Fraser "**major, permanent and irreversible environmental harm**" (Federal parliament, 10 November, 1976).

When the Premier's late father Kevin Newman (Environment minister under Malcolm Fraser) conveyed the news to the Queensland government that sand mining was to be closed down within weeks of the announcement, the Queensland government protested. It asked for a 2 year transition in the interests of what it said were more than 600 workers who would lose their jobs. The Federal government refused the request, preferring to act in the national interest to protect the environment and the area's future attraction to nature tourists. Few would argue that this was the wrong decision. The area has flourished as a result of the world's interest in Fraser Island.

Although North Stradbroke Island has been damaged by past sand mining, it has a future in nature tourism. Fraser Island has too many tourists. North Stradbroke has similar attractions and additional ones such as a genetically unique and natural population of koalas. It also is much more accessible. It is virtually a suburb of Brisbane. To choose to extend sand mining at Enterprise mine to enable a total of approximately 14 square kilometres to be cleared of vegetation (including koala habitat) so that sand mining can churn up ancient 300,000 year old sand dunes will be judged harshly by history. As the Environment department and the Mines department are aware, there is scientific opinion that we have reached a tipping point on North Stradbroke. Extending sand mining flies in the face of this and ignores the precautionary principle. See the **attached** opinion of Professor Carla Catterall.

As we point out in this submission, your government is also aware of the opinion of Dr Errol Stock that mining is having a significant impact on the 18 Mile swamp, supposedly protected under an international treaty (RAMSAR) and the Environment Protection and Biodiversity Conservation Act (EPBC Act).

The proposed Bill extends the total area permitted to be cleared of vegetation for sand mining at the so-called Enterprise mine, to approximately 14 square kilometres. Dredge mining takes place up to a depth of 100 metres, often below the water table. The area includes old growth forests, the habitat of many plants and animals, including threatened species. This is confirmed in the mining company's own Environmental Studies Report 2003, which was provided by the Mines department to the committee last Friday. It is noted that this report states that it was prepared for only the first stage of mining at the so-called Enterprise mine ie up to 2012 - see section 1.2 of the main report (Volume 1) titled "Purpose of this Report". The second last paragraph of the introduction 1.1, also makes it clear that the second stage of the Enterprise mine (ie 2013 onwards) is subject to further "...environmental assessment". Of course, it was also subject to renewal of expired mining leases.

Although some of this land within the Enterprise mine area was mined decades ago, this was done in patches using the dry mining method, not to be compared with current dredge mining which consumes sand dunes up to 300,000 years old down to a depth of up to 100 metres, destroying the complex dune structures and the hydrological functions of these dunes. Dr Stock refers to these issues in his report. The company's ESR contains maps which show the patchy nature of the previous sand mining (less than the claimed 50%) and the large areas which have never been mined (eg Main Report – Volume 1, Figure 3-13 - figure **attached**). This map shows the rich variety of vegetation proposed to be cleared for mining.

We now address the three issues being examined by the committee as indicated on its website:-

1. The policies the Bill seeks to give effect to:-

The pre-election promises by Mr Newman

This Bill does not give effect to the Premier's little known pre-election promises to restore rights taken away and not to give Sibelco "something more than was originally there". As mentioned, we have **attached** an audio and a written transcript of the Premier informing the public of his policy on ABC radio on 20 January, 2012.

The North Stradbroke island sand mining issue received significant media coverage in the lead up to the Premier's policy announcement. Examples from one media source can be found here <http://www.news.com.au/search-results?q=sibelco>.

Prior to the Premier's policy announcement, it was unclear what the LNP's policy on North Stradbroke Island was. On 20 January, 2012 during an ABC radio interview with Steve Austin the Premier was asked by a caller whether he would extend sand mining either... 'in terms of the number of years or the area to be mined'.

Mr Newman very clearly stated that the mining company would not be given anything it was not entitled to previously... "*We will allow, we will allow the mine to proceed in the way that it was originally allowed to prior to the actions of the last 18 months.... **the premise has been put to me as though we're giving something more than was originally there and that is not the case. We would be restoring rights of the community and the company to continue so that the mine ultimately can progress orderly to a, in an orderly way to a shut down. That's what we're saying. Now that isn't weasel words, the premise was put to me that in some way we'd be extending – that's not the case, the community and the mining company had certain rights which Anna Bligh and Labor took away last year. There's a huge difference there.***"

We request the committee to listen to the Premier's words by playing the supplied audio transcript. If this Bill is to give effect to the Premier's pre-election promises, to restore rights, it will need to be re-drawn.

The restoration of Sibelco's and the community's rights .

What were the pre-existing rights extinguished by the 2011 Act, to be restored by Mr Newman?

Despite misleading claims by Sibelco and others to the contrary, under the MRA there is no legal power to renew an expired mining lease unless the Minister is satisfied of each factor set out in section 286A (copy **attached**).

Mr Newman promised that he would not give the mining company any additional rights. This was clearly stated more than once in the interview. His policy was based upon his restoring Sibelco's and the community's rights in relation to expired mining leases.

It is important to distinguish what the Premier promised from the result he (and others) may have mistakenly believed would necessarily follow from honouring his promises. The reality is that in Queensland there is no automatic right to renewal of an expired mining lease. There are established requirements for renewal set out in the Mineral Resources Act 1989. Our legal advice included reference to legal precedents for judicial challenges to decisions on applications to renew – both by mining companies and opponents to renewal. An example of the community

members applying to the Supreme Court to review a renewal decision is Wright and Bright v Minister for Mines <http://archive.sclqld.org.au/qjudgment/2012/QSC12-112.pdf>

An example of a failed application for renewal being challenged by a mining company is Papillon Mining v Minister for Mines – <http://archive.sclqld.org.au/qjudgment/2009/QSC09-097.pdf>

Prior to the former government's intervention referred to by Mr Newman in the radio interview, a number of mining leases had expired, the most important of which was ML 1117. The law relating to expired mining leases is clearly set out in the State's Mineral Resources Act 1989(MRA). An application for renewal is to be lodged before expiry (s.286) but mining can continue until the application is decided (s.286C).

Continued mining at Enterprise mine depended upon the renewal of ML 1117, as acknowledged by the explanatory notes to the 2011 Bill.

An interested party with sufficient standing who is dissatisfied with the decision under s.286A can apply for judicial review of the decision (as advised by the Honourable Tim Carmody QC – see below). FOSI and many others objected to the renewal of the expired leases including ML 1117. This is well known and received significant media coverage over several years. FOSI members also attended a meeting with the Minister's staff to personally object to renewal of expired leases. We were informed that our objections would be taken into account in the decision by the Minister under s.286A.

We had legal advice from barristers indicating that we had good prospects of successfully challenging any decisions by the government to renew. We were listed as a stakeholder in mining company documents (eg the mining company's own Environmental Studies Report (ESR) which the committee has a copy of, at Volume 3, Appendix N, page 4). It was likely that the court would accept that we had a sufficient interest to seek review of the decision. We were also aware that indigenous owners were likely to challenge any renewals.

As mentioned, we had legal opinions indicating good prospects of over-turning renewals. The advice included that, in the special circumstances existing on North Stradbroke, no minister could be genuinely satisfied of all of the factors listed in s.286A of the MRA, in particular **s.286A (1)(d)**:-

- . **(d) having regard to the current and prospective uses of the area of the lease, the operations to be carried on during the renewed term of the lease—**
 - (i) are an appropriate land use; and**
 - (ii) will conform with sound land use management;**

Our organisation's rights and the rights of others opposed to the renewal of expired mining leases were acknowledged and confirmed in a legal opinion from The Honourable Tim Carmody QC dated 4 April, 2012. A copy of his opinion is **attached**. Mr Carmody (now Judge Carmody, Chief Magistrate of Queensland), concluded in relation to the 2011 Bill, that the explanatory notes and the submission of the Queensland Law Society in particular were "seriously deficient and unbalanced" in favour of Sibelco. He also concluded that Sibelco gained a significant benefit from the legislative renewal of ML1117 while significant detriment was suffered by environment

groups and indigenous owners opposed to renewal because our rights to challenge renewal were extinguished. It is important to understand that this was about existing applications before the minister relating to already expired mining leases. The process had already begun. Our rights to challenge decisions to renew were taken away retrospectively.

On 4 July, 2012 the Queensland Law Society, as recommended at the conclusion of Mr Carmody's opinion, sent a letter to the appropriate parliamentary office correcting its March 2011 submission by referring to the breaches of fundamental legislative principles not mentioned in its 30 March 2011 submission to parliament. A copy of the Law Society's correcting letter is **attached**. It recognises that our rights to challenge the renewal of already expired mining leases were removed by the 2011 Act in breach of fundamental legislative principles and the rule of law.

The premier's policy announcement, as has already been discussed, was fundamentally based upon the restoration of rights, with nothing more to be given to Sibelco. This Bill will, if passed, result in broken promises by the Premier. It does not restore rights taken away by the former government, as Mr Newman very clearly promised. It provides benefits to Sibelco which are far beyond any prior right held by the company. Mr Newman promised this would not occur.

Sibelco had a right to a decision on its applications to renew expired mining leases and a similar right to the opponents to renewal to challenge an unfavourable decision in the courts. That was the extent of its prior rights. The application (copy **attached**) to renew the key expired lease, ML 1117 was for 21 years from the date of expiry which was 31 October, 2007. The effect of the Bill is to hand Sibelco an extension totalling 28 years, while at the same time denying opponents their right to challenge the renewal. This is a direct result of Mr Newman failing to honour his election promise to restore rights. As Mr Carmody and the corrected Law Society submission point out, the restriction on rights to challenge renewals does not exist anywhere else in Queensland. Elsewhere, judicial review is available. If the Bill is passed, the cumulative effect of Mr Newman's broken promises will be substantial.

We submit that the Bill should be re-drafted to reflect the Premier's pre-election promises. Consideration of the renewal of ML 1117 and other leases which had expired should take place under the MRA, s.286A, as occurs everywhere else. This can be achieved by amending the 2011 Act in various ways, including to reinstate Sibelco's applications to renew ML 1117 and ML 1120 in particular. This will restore both Sibelco's and the opponents' rights as far as possible and would honour the Premier's promises.

2. The Bill's Lawfulness

It is submitted that the Bill is unlawful because it conflicts with the native title rights of the Quandamooka people as set out in the judgement of Dowsett J of the Federal Court of Australia. <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2011/2011fca0741>

Under the Federal Court's orders, native title rights were recognised, including over non-exclusive areas covered by mining leases, including the entire area of ML 1117. The material provided on notice to the committee last Friday and published on its website, contains maps of the native title areas covering most of the Island. The native title rights attaching to the land under mining lease at the date of the Federal court orders, are exercisable upon the expiry of the mining leases. The State of Queensland and Sibelco, via subsidiary companies which hold the mining leases, consented to the orders. The Bill's proposed extension of the terms of mining leases is in conflict with the exercise of native title rights under the Federal Court's orders and breaches the State of

Queensland's and Sibelco's agreement with the orders, because it proposes to postpone the exercise of native title rights for 20 years and will involve substantial damage to the land mined as well as putting at risk off-lease areas including protected wetlands and the island's substantial aquifer.

You don't need to be a lawyer to appreciate that the extension of sand mining would obviously conflict with native title rights and interests recognised in the court's orders. For that reason it is submitted that those parts of the Bill which propose the extension of sand mining are unlawful.

3. The Bill's interference with individual rights and liberties in breach of fundamental legislative principles

The Legislative Standards Act (LSA) defines fundamental legislative principles in section 4(1) as being "the principles relating to legislation that underlie a parliamentary democracy based on the rule of law".

As section 4(2) states, "the principles include requiring that legislation has sufficient regard to—

(a) rights and liberties of individuals;"

Section 4(3) LSA provides examples of whether legislation has sufficient regard to the rights and liberties of individuals.

Mr Newman promised to restore rights of Sibelco and the community. He also promised not to give Sibelco "more than was originally there". What Sibelco and the community had before was a right to have the Mineral Resources Act applied to the expired leases on Stradbroke Island. This Act is applied to all other expired mining leases in Queensland.

A fundamental principle of the rule of law is that all citizens should be treated equally under the law. In other words, the same law should apply to all. No one could seriously dispute that this makes sense in a democracy. This means that if a mining lease expires in central Queensland and an application is made to renew it, the same law should apply as applies elsewhere in Queensland, so that everyone – the mining company and opponents to renewal – know where they stand and have the same rights to challenge the decision in the Supreme Court. This Bill breaches that fundamental principle – once again.

The Bill breaches this fundamental democratic principle because Mr Newman has broken his promise to restore rights. But he has gone much further than Anna Bligh. She took away our right to challenge the decision to renew ML 1117 – the lease critical to whether Enterprise mine could continue. Mr Newman proposes to put in place a mechanism whereby Sibelco can apply to renew ML 1117 and two other leases – in 2019 (see clause 9, s.11C of the Bill). The minister, in effect, must renew the leases (Clause 9, s.11D) and the decisions in reality cannot be challenged in court by opponents to renewal. (s. 11F).

In addition to the Bill seriously breaching fundamental aspects of the rule of law, by reference to s.4(3) of the Legislative Standards Act, we also submit that the Bill breaches the fundamental legislative principles because there is insufficient regard (in fact no regard) to our right to natural justice (s.4 (3) (b)). The rights enjoyed by Queenslanders elsewhere to be heard on the question of an expired lease renewal have been again denied – with the extinguishment of natural justice rights having an even greater impact than the 2011 North Stradbroke Act.

The Bill extends the retrospective adverse impact on judicial review rights to challenge the renewal of the expired mining leases – in breach of s. 4(3)(g). For example, FOSI objected to the renewal of ML 1117 when the application was being considered by the former minister. We even attended a meeting with his staff to discuss our objections. We expected a decision to be made.

We had the right to challenge the decision in the Supreme Court, as has already been explained. The current Act renewed ML 1117 to 31 December, 2019, extinguishing our rights. This Bill proposes to, in effect, extend the renewal period to 2035 for mining purposes. This will result in a substantial aggravation of the retrospective loss of our pre-existing rights to challenge the renewals in court.

In relation to ML 1120, the condition preventing mining is to be removed (Clause 9, s.11A) and then renewal is to be allowed for mining to 2035, in the same way as applies to ML 1117. The renewal of ML 1120 (for non-winning purposes) in 2011 by the 2011 Act was puzzling, as the lease is a long way north of the restricted mine path. However its renewal in 2011 could not be said to result in destruction of any bushland and sand dune structures because the winning of minerals was prohibited. Now, the situation has been reversed, with the land on this lease to be subjected to sand mining. Our right to challenge this renewal is extinguished by the Bill as has been explained.

Finally, it is apparent that the Bill has no regard whatsoever for aboriginal tradition and custom – as required by s. 4(3)(j) of the LSA. It seeks to permit major, permanent and irreversible damage to aboriginal land and to suspend the exercise of native title rights to that land for 20 years. Under this proposal, when finally handed back, it will obviously be in a significantly degraded state.

Other concerns relating to the Bill's legitimacy and its impact on democratic principles and the rule of law

(a) The Enterprise mine may be unlawful under commonwealth law

The Enterprise mine, which borders RAMSAR protected wetlands, was not subjected to commonwealth government scrutiny under the Environment Protection and Biodiversity Conservation Act (EPBC Act) 2000 before sand mining commenced at this mine in 2004. We **attach** a diagram showing the mine's proximity to the RAMSAR areas. The commonwealth department is currently investigating whether the mine is lawful under commonwealth law and, if not, what the consequences should be. Consideration of the Bill should be suspended until the commonwealth department completes its investigation.

In October, 2012 a copy of a report from Dr Errol Stock dated 20 September, 2012 and a letter concerning the Enterprise mine's lack of approval under the EPBC Act was sent by our lawyers to the Director General of the Department of Environment and Heritage Protection and the Minister, Mr Powell. We **attach** copies of correspondence from Mr Powell and Mr Chesterman acknowledging receipt of the documents. No further correspondence has been received from either.

We also **attach** a copy of a letter dated 5 September, 2013 from the Acting Director of the EPBC Act compliance section of the Commonwealth Department of Sustainability, Environment, Water Population and Communities, Daniel Curtin, to confirm the on-going enquiry into the Enterprise mine. Dr Stock's September, 2012 report concluded that the Enterprise mine has caused (and is likely to cause) significant hydrological impacts to the 18 Mile swamp RAMSAR area to the east of the mine. Subsequently, our lawyers have provided the commonwealth department with evidence of recent damage, including the loss of substantial areas of vegetation, in a RAMSAR protected area immediately to the west of the Enterprise mine. Our scientific expert is of the opinion that the most likely cause of the damage is excess water emanating from the Enterprise mine operations and flowing into this sensitive, protected area, killing off the vegetation. If this is correct, we would expect serious consequences, based upon the commonwealth's actions elsewhere. This issue forms part of the commonwealth department's continuing investigation.

(b) The unresolved criminal charges against Sibelco

Sibelco, then called Unimin, was charged with offences in 2009. It changed its name in December, 2010. The trial of two charges is scheduled to continue in the Brisbane Magistrates Court on Wednesday, 30 October, following last month's Supreme Court decision refusing Sibelco's application to stop the trial:-

<http://archive.sclqld.org.au/qjudgment/2013/QSC13-270.pdf>

The extraordinary delay in the trial coming to a conclusion raises serious questions about our criminal justice system. It should not take the Magistrates Court 4 years to finalise charges. Earlier this year the magistrate ordered Sibelco pay an unprecedented amount in costs (in excess of \$250,000) relating to a number of Sibelco's failed applications before the magistrate, which have delayed the trial - <http://archive.sclqld.org.au/qjudgment/2013/QMC13-003.pdf>

In these circumstances, it would be an extraordinary step for the government to proceed with the proposed Bill to gift the accused company, Sibelco, \$ 1.5 Billion in revenue, according to forecasts in the material published on the committee's website, before the trial concludes.

[REDACTED]

[REDACTED]

[REDACTED]

The Supreme Court and Court of Appeal held that the non-mineral silica sand could not be removed and sold for landscaping and construction purposes unless the required permits were obtained, but the company's criminal responsibility was not decided by those courts because the proceedings were civil in nature. Sibelco was charged with summary criminal offences shortly after the initial Supreme Court decision.

[REDACTED]

Conclusion

The Bill is in stark contrast to the result which would follow if Mr Newman's pre-election promise to restore Sibelco's and the community's rights is honoured. We call upon the committee to recommend the suspension of further consideration of the Bill until:-

1. Mr Newman gives further consideration to honouring his pre-election promises to restore rights and not to give Sibelco benefits it was not previously entitled to;
2. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
3. The criminal trial in the Magistrates Court is concluded or [REDACTED] those proceedings have concluded;
 4. The commonwealth completes its investigation under the EPBC Act into the Enterprise mine and decides what action, if any, is proposed;

There are so many questionable aspects relating to the North Stradbroke island decisions. These include the Premier's willingness to break pre-election promises as detailed in this letter and allow special legislation to be introduced benefiting a company on trial over illegal sand mining practices on Stradbroke. For these reasons, in the public interest, we also call for a full, independent public enquiry before the Bill is taken any further.

We wish to briefly address the committee this Wednesday at the public hearing in relation to our concerns with the Bill.

Yours Sincerely,

Sue Ellen Carew
President

(personal contact details will be included in email attaching this letter).

ATTACHMENTS

1. Audio transcript of extract of radio interview with the Premier on 20 January, 2012
2. Typed transcript of this interview
3. Opinion of Professor Carla Catterall
4. Figure 3-13 showing the rich variety of vegetation communities at the Enterprise mine
5. Section 286A of the Mineral Resources Act
6. [REDACTED]
7. Queensland Law Society's letter to the parliament dated 4 July, 2012 correcting its submission to the parliament on the 2011 Bill
8. Diagram showing Enterprise mine's proximity to the adjoining RAMSAR protected areas
9. Copies of correspondence between our lawyers and Mr Powell and the Director General of the Department of Environment and Heritage Protection re the EPBC Act issues
10. Copy of letter from Acting Director of Commonwealth environment Department dated 5 September, 2013

TRANSCRIPT OF RADIO INTERVIEW BETWEEN STEVE AUSTIN
& CAMPBELL NEWMAN (CALLER: JAN)
ON 20 JANUARY 2012

JAN: Hello Mr Newman

CN: Hello Jan

JAN: My question is will you be looking to increase sand mining on North Stradbroke Island in terms of the number of years or the area to be mined. At the moment there's specific dates legislated for when mining is to end and are you going to change it?

CN: Well look, this is the way that we feel about Stradbroke Island. Um, unlike um Anna Bligh and my opponent in Ashgrove, Kate Jones, I care about the people on Stradbroke Island who actually are seeing their livelihoods, um their business, um their jobs trashed. Now sand mining has to come to an end on Stradbroke Island let's be very very clear about that, we want to see ultimately a wonderful national park there, we want to see the island remediated, ah we want to see it ultimately to be all about um tourism, eco-tourism and the like. But where we differ from the government is we care about people, that mine is important currently and we're saying that the government shouldn't have, in a unilateral and a very capricious way, come in in the last 12 months and it was all about green preferences, come in and actually curtail mining in terms of what was originally permitted under the leases. We believe that there should be a proper orderly run out of those leases requiring the company to remediate to the highest environmental standards and allowing the island the proper time to transition to a new economy. It's got to happen eventually

SA: **So you may increase the sand mining leases**

CN: **Well, well**

SA: **Or extend them or allow them to be extended?**

CN: **No no hang on, we would go, we would go back to where we were before the government came in and chopped everyone off at the kneecaps.** This is about family Steve, this isn't just about a big mining company. This is about people who've seen you know their whole means of support, their income ripped out from underneath them and there's a lot of very unhappy people on Stradbroke Island and I think

it's about time we listened to them and not just the political messages from Anna Bligh and Kate Jones and others

SA: But how, but Kate Jones hasn't said anything about Stradbroke

CN: No she has

SA: No

CN: No hang on she was the minister for the environment and she's my opponent in Ashgrove and this is a decision where she has hurt people and you know I think what I'm saying is reasonable, I think it's a long-term best interest of the environment and the community we adopt approach

SA: But Jan's question was will you increase sand mining on North Stradbroke Island. So will you adjust the leases

CN: Well

SA: Will you give the mining company more latitude to

CN: We will allow, we will allow the mine to proceed in the way that it was originally allowed to prior to the actions of the last 18 months

SA: In my mind that's a yes

CN: yeah well the premise has been put to me as though we're giving something more than was originally there and that is not the case. We would be restoring rights of the community and the company to continue so that the mine ultimately can progress orderly to a, in an orderly way to a shut down. That's what we're saying. Now that isn't weasel words, the premise was put to me that in some way we'd be extending – that's not the case, the community and the mining company had certain rights which Anna Bligh and labour took away last year. There's a huge difference there.

SA: 20 past 9 across South-East Queensland, this is 612 ABC Brisbane, at ABC digital my name's Steve Austin and Campbell Newman is my guest.

Ecological Success of Post-mining Rehabilitation

Associate Professor Carla Catterall
Griffith University

The field of ecosystem restoration is currently in its infancy, something like the state of medical practice in the eighteenth century – attempts are being made which vary in their success, but whose outcomes have not been subject to the kind of scientific scrutiny that is needed in order to be even moderately confident of a successful outcome. Furthermore, even in the most promising of situations, there is an extremely high risk that restoration will fail to produce the hoped-for outcomes within the expected time frame (i.e. within a decade or two). Over longer periods, we simply don't know as the work has not been done.

For example, early revegetation of sand-mined areas in eastern Australia involved the widespread planting of Bitou Bush, which then became a significant weed species invading natural areas along much of the east coast. Thankfully, post-mining practices have improved during the past three decades (for example, they focus on establishing locally native rather than introduced plant species), but they would still fall a long way short of being able to replace the ecosystems that were present before mining.

Restoring an ecosystem requires the reinstatement of the full complement of pre-impact biodiversity. This encompasses both species diversity (including species of plants, worms, insects, birds, mammals, etc.) and the ecological processes which enable these species to persist in the longer

term while maintaining resilience to natural disturbances (such as fire, storms and climate variation). Such processes include dispersal, nutrient cycling, pollination, food-chain maintenance and many others.

A scientific review of past attempts at restoring biodiversity and ecosystems (Hilderbrand *et al.* 2005) concluded that there is a very high risk that restoration projects will fail to achieve their objectives.

Common reasons for this include the following:

1. The 'field of dreams' fallacy. For example, it is incorrect to assume that initial success in growing a limited number of plant species will eventually result in colonisation of the area by most of the other desired species (the plants, animals and microbes of the original ecosystem). Many species lack the movement and dispersal capabilities to move to these areas in sufficient numbers for restoration of their populations.

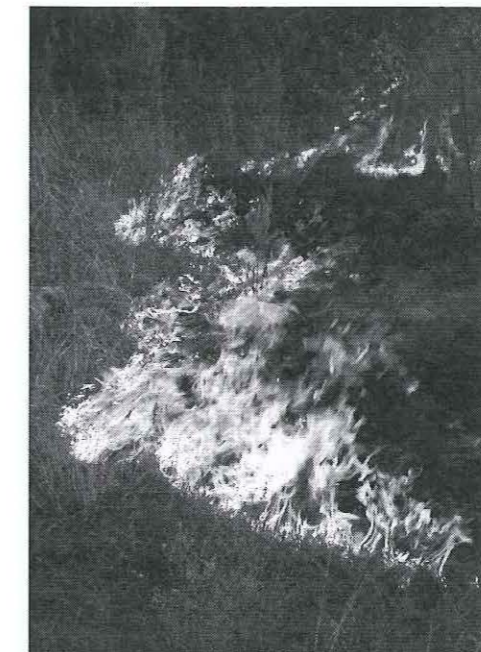
2. The 'carbon copy' myth. For example, it is not possible to copy an original ecosystem in situations where the physical properties of an area have changed (e.g. where soil nutrients or hydrological processes have been altered, as is the case in sand mining).

3. The 'fast forward' myth. For example, natural forest ecosystems take centuries to redevelop after large-scale disturbance, and there is no proof that restoration actions will be able to significantly accelerate this.

My own research into the use of replanted rainforest sites by birds, reptiles and insects has shown that,

while ecological development looks encouraging in the first decade (with apparently 50% recovery after 10 years), there is substantial risk that many sites may never regain the other 50% of biodiversity, and at best it will require many further decades (see Catterall *et al.* 2008).

In the case of post-mining restoration of natural ecosystems to sand deposits of coastal Southeast Queensland, the failure risk is far higher, due to the unusual soil nutrient requirements of many plant species and the relatively poor ecological understanding of the fauna and flora. If the restored ecosystem only partially resembles the original, there is a further risk that it may lack resilience to fire, storms and climate change.



Rehabilitated ecosystems are much less resilient to disturbance events such as fire (PD)

In mainland regions, where large areas of land are currently degraded as a result of previous land uses, there are various useful attempts currently underway at restoration, and these are likely to produce a net ecological benefit in spite of their uncertainty of full success. However, in areas which currently support important natural or near-natural vegetation, the most likely outcome from removing the vegetation and soil structure, and then attempting to restore them, is a large net loss of ecological value, because this restoration will fall short of the previous natural community.

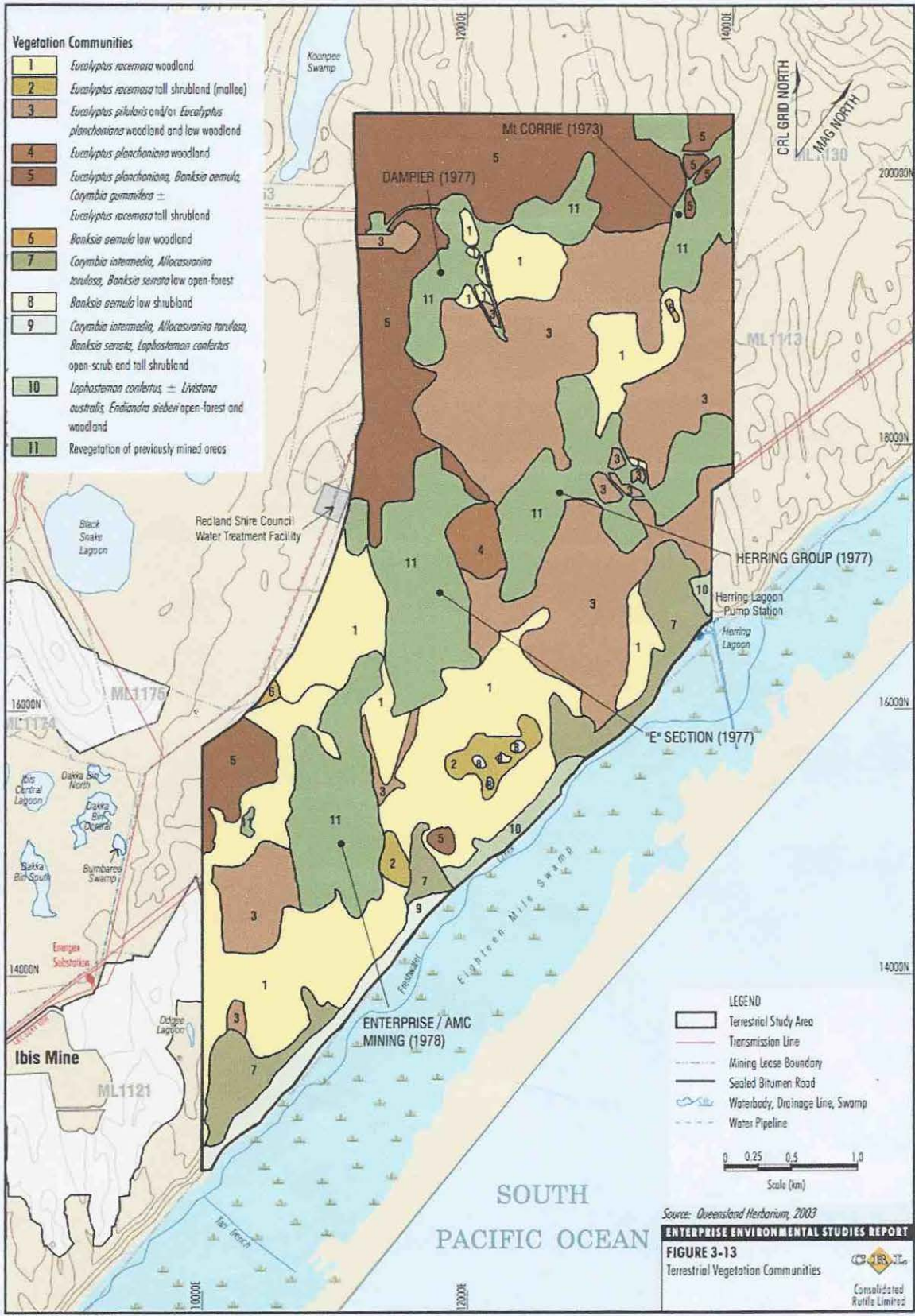
With respect to North Stradbroke Island in particular, there is currently a spatial mix of substantial areas of intact native habitat with other areas that were previously sand-mined and partially restored. This mix retains the potential to sustain the Island's biodiversity in the longer term: the large intact areas can provide a source of species to progressively recolonise partly-restored areas. However, if the total area of intact vegetation is reduced, together with further mining of other areas, there is a considerably greater risk that the Island's ecological values will be irreversibly degraded over time.

Catterall CP *et al.* 2008. Biodiversity and new forests: Interacting processes, prospects and pitfalls of rainforest regeneration. Pp 510-525 in: Stork N and Turton S (eds.) *Living in a Dynamic Tropical Forest landscape*. Wiley-Blackwell, Oxford.

Hilderbrand RH *et al.* 2003. The myths of restoration ecology. *Ecology and Society* 10: 19.

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- (vii) whether the land and surface area in relation to which the renewal is sought is of an appropriate size and shape for the activities proposed to be carried out under the renewed lease;
 - (viii) the financial and technical resources available to the applicant to carry on mining operations under the renewed lease;
 - (ix) in relation to the parcels of land the whole or part of which are the subject of the application—
 - (A) a description of the parcels of land; and
 - (B) the current use of the land; and
 - (C) the name and address of the owner of the land (the *primary land*) and the name and address of any other land which may be used to access the primary land.
- (3) In this section—
- renewal period* means the period that is—
- (a) at least 6 months, or any shorter period allowed by the Minister in the particular case, before the current term of the lease expires; and
 - (b) not more than 1 year before the current term expires.

286A Decision on application

- (1) Subject to schedule 1A, part 6, division 5, the Minister may grant an application for the renewal of a mining lease if satisfied of each of the following—
 - (a) the holder has complied with—
 - (i) the terms of the lease; and
 - (ii) this Act in relation to the lease;
 - (b) the area of the lease—

Mineral Resources Act 1989
 Chapter 6 Mining leases
 Part 1 Mining leases generally

[s 286A]

- (i) still contains workable quantities of mineral or mineral bearing ore; or
- (ii) is otherwise required for purposes for which the lease was granted;
- (c) the proposed term of the renewed lease is appropriate;
- (d) having regard to the current and prospective uses of the area of the lease, the operations to be carried on during the renewed term of the lease—
 - (i) are an appropriate land use; and
 - (ii) will conform with sound land use management;
- (e) the land and surface area for which the renewal is sought is of an appropriate size and shape in relation to the activities proposed to be carried out;
- (f) the financial and technical resources available to the holder to carry on mining operations under the renewed lease are appropriate;
- (g) the public interest will not be adversely affected by the renewal;
- (h) for a lease subject to a condition mentioned in section 285—the lease should be renewed.

Note—

If the application relates to acquired land, see also section 10AAC.

- (2) Subsection (3) applies if—
 - (a) the application relates to land that is the surface of a reserve; and
 - (b) the Governor in Council's consent was given to the grant of the mining lease; and
 - (c) the owner of the reserve does not give written consent to the renewal.
- (3) Despite subsection (1), the Minister can not grant the application if the Governor in Council has not consented to the renewal.

-
- (4) The renewal may be granted for the further term, decided by the Minister, that is not longer than the period for which compensation has been agreed or determined under section 279, 281 or 282.
 - (5) The renewed lease is subject to—
 - (a) any conditions prescribed under a regulation; and
 - (b) any conditions decided by the Minister.
 - (6) Without limiting subsection (5), the Minister may decide a condition of the renewed lease if the Minister considers the condition is in the public interest.
 - (7) The Minister may refuse the application if the Minister—
 - (a) has served on the holder a notice in the approved form asking the holder to show cause, within the period stated in the notice, why the application should not be refused; and
 - (b) after considering the holder's response, is satisfied the application should be refused.
 - (8) Without limiting subsection (7)(b), the Minister may refuse the renewal if the Minister considers the renewal is not in the public interest.
 - (9) As soon as practicable after deciding the application, the Minister must give the holder a written notice stating—
 - (a) the decision; and
 - (b) if the decision is to grant the renewal on conditions or refuse the renewal—the reasons for the decision.

286C Continuation of lease while application being dealt with

- (1) Subsection (2) applies if—
 - (a) a properly made application for renewal of a mining lease is not withdrawn, refused or granted before the lease's expiry day ends; and
 - (b) after the expiry day, the holder—

Your Ref:

Quote in reply: 22000175:212180

4 July 2012

Scrutiny of Legislation Secretariat
C/- Parliament House
George Street
BRISBANE QLD 4000

Dear Sir/Madam

North Stradbroke Island Protection and Sustainability Bill 2011 (the Bill)

The Queensland Law Society writes to you concerning its submission to the then Parliamentary Scrutiny of Legislation Committee on the *North Stradbroke Island Protection and Sustainability Bill 2011 (the Bill)*. A copy of the Society's submission dated 30 March, 2011 is attached. We note that the Bill was passed without amendment and commenced on 14 April (the Act).

We have become aware of some controversy concerning the Society's submission on North Stradbroke Island sand mining, following media coverage of it.

The concern raised in our submission was whether some aspects of the Bill complied with the *Legislative Standards Act 1992* – in particular the fundamental legislative principles that underlie a parliamentary democracy based on the rule of law (s.4). However, given the time constraints and available resources, the QLS submission was based only upon an examination of the legal drafting aspects of the Bill.

At that stage the only breach of fundamental legislative principles identified was s. 6 (no compensation) and its association with Part 2, Division 2, provisions curtailing some existing mining interests.

Our submission referred only to mining company interests being adversely affected by the Bill. This had the potential to mislead as several expired mining leases were also to be renewed by s.11, providing a benefit to the miner.

Also, our submission did not refer to s.6 impacting upon traditional owners opposed to sand mining continuing. Section 6 may preclude them from claiming compensation for the impact upon their native title rights and interests arising from the renewal of expired mining leases.

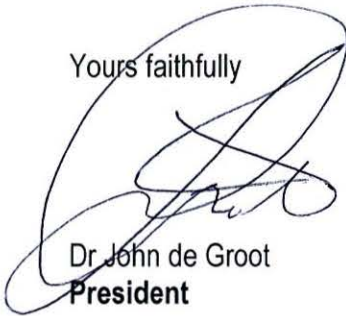
In fairness to all involved in the political debate on the continuance of sand mining on North Stradbroke Island we acknowledge that there are other aspects of the Bill which affect the rights and liberties of individuals which were not included in the Society's submission.

It is a fundamental element of the rule of law that laws should have general application and be applied equally to all. The Act breached this principle because it created a special law dealing with expired mining leases in one geographical area, North Stradbroke Island, instead of applying the general process under s.286A of the Mineral Resources Act 1989 (MRA) which applies elsewhere.

The effect of dealing with these expired mining leases outside of the general process under s.286A of the MRA, is that the Minister was not required to be satisfied of all the required statutory renewal factors set out in 286A(1)(a) to (h) and also parties aggrieved by the s.11 renewals do not have any right of judicial review of the decision. This impacts upon the rights and liberties of individuals, including traditional owners and environmental stakeholders.

In conclusion, because of the way the Society's submission has been interpreted we considered that, in fairness and in the public interest, we would write to you and other interested parties. We do so to acknowledge that there are arguments on both sides but to make it clear that we do not support any side in the debate over sand mining on North Stradbroke Island. That is not our role as a professional body.

Yours faithfully

A handwritten signature in black ink, appearing to read 'John de Groot', is written over a large, light-colored oval shape that serves as a background for the signature.

Dr John de Groot
President

cc

Hon Andrew Powell MP
Member for Glass House
Minister for Environment and Heritage Protection
GPO Box 2454
Brisbane QLD 4001

Office of the President

J 5/4/11

Your Ref: Scrutiny of Legislation Committee

Quote in reply: Planning and Environment Law Committee

30 March 2011

Ms Julie Copley
The Research Director
Scrutiny of Legislation Committee
Parliament House
George Street
BRISBANE QLD 4000



B5.11

scrutiny@parliament.qld.gov.au

Dear Ms Copley

NORTH STRADBROKE ISLAND PROTECTION AND SUSTAINABILITY BILL 2011

The Queensland Law Society wishes to raise some concern with aspects of the *North Stradbroke Island Protection and Sustainability Bill 2011* (the Bill) which breaches fundamental legislative principles.

The Society has no comments on Government's stated policy with respect to mining on North Stradbroke Island and acknowledges the right of Government to settle and implement its own policy position. The Society merely raises concern with aspects of the drafting of the Bill which would appear not to have sufficient regard to the rights and liberties of individuals.

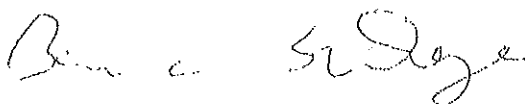
The *Legislative Standards Act 1992* sets fundamental legislative principles which underlie a parliamentary democracy based on the rule of law. The principles require that legislation must have sufficient regard to the rights and liberties of individuals.

In the Bill a number of lawful mining interests are terminated unilaterally on various future dates. These terminations are subject to clause 6 of the Bill which denies any 'compensation, reimbursement or otherwise' to any person by the State due to the operation of the Bill. This effectively denies a party who presently lawfully enjoys use of one of the affected mining interests a portion of their legitimate expectation without recourse to any form of compensation or review of the decision.

The concern of the Society is that clause 6 breaches the fundamental legislative principle of having sufficient regard to the rights and liberties of individuals, as it denies compensation to a party whose lawful tenements have been extinguished by the State.

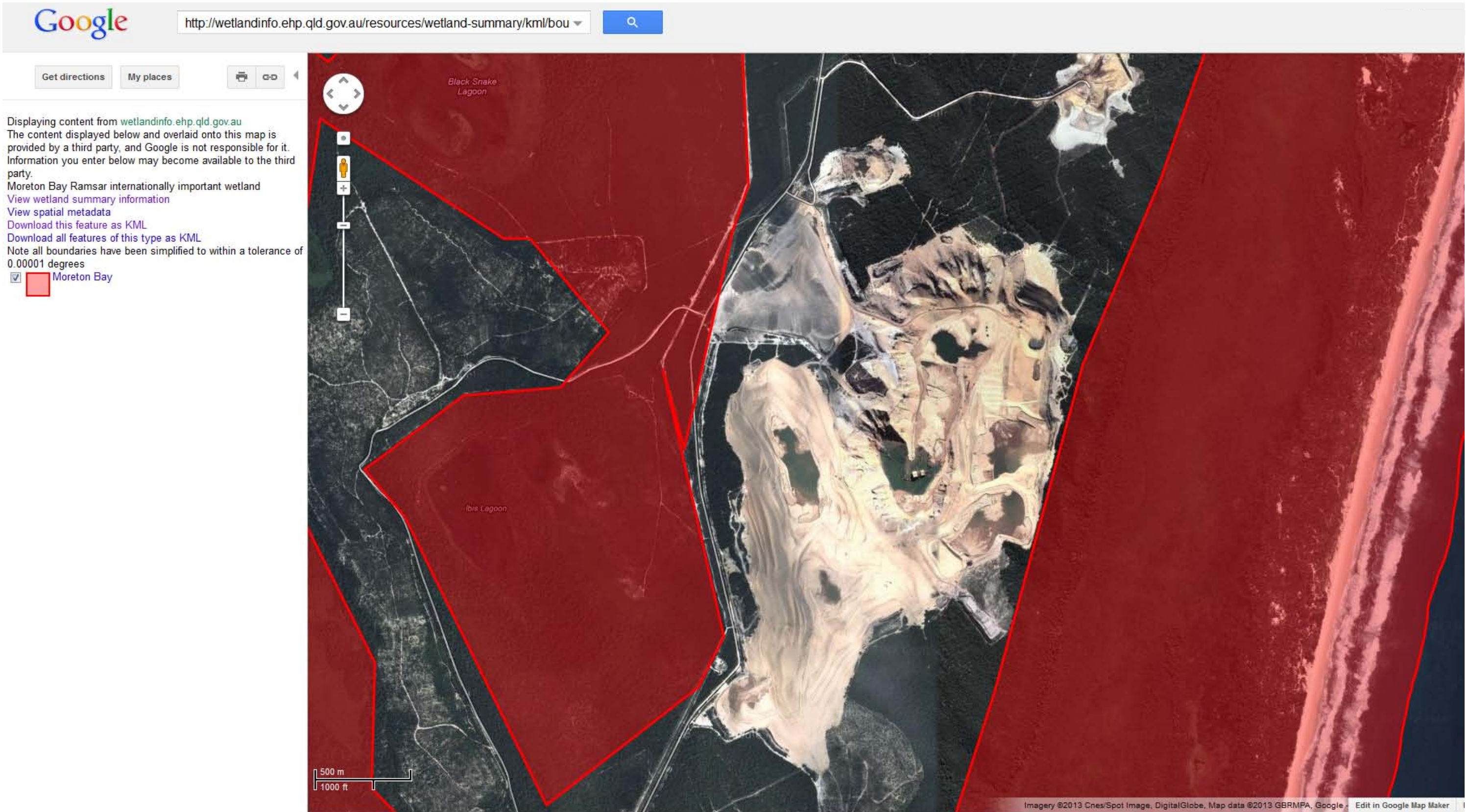
Thank you for providing us the opportunity to put these views to the Committee.

Yours faithfully



Bruce Doyle
President





Satellite image of Enterprise Mine on North Stradbroke Island overlaid with Moreton Bay Ramsar Wetland boundaries (in red)

Source: Queensland Government Department of Environment and Heritage Protection website at <http://wetlandinfo.ehp.qld.gov.au/wetlands/facts-maps/ramсар-wetland-moreton-bay/> viewed 27/5/2013

Richard Carew

From: Environment <Environment@ministerial.qld.gov.au>
Sent: Wednesday, 3 October 2012 9:26 AM
To: Richard Carew
Subject: RE: North Stradbroke Island sand mine compliance issues

Saved: 0

Good morning

Thank you for your email which has been received.

Regards



Frangi Spilsbury

Administration Officer & Backbench Liaison Officer
The Hon Andrew Powell MP | Minister for Environment and Heritage Protection

From: Richard Carew [mailto:rcarew@carewlawyers.com.au]
Sent: Tuesday, 2 October 2012 5:55 PM
To: Andrew.Chesterman@ehp.qld.gov.au
Cc: Environment
Subject: North Stradbroke Island sand mine compliance issues

Dear Mr Chesterman,

We attach a copy of our letter to you dated 2 October, 2012, including the following attachments referred to:-

- a copy of our letter to Mr Grant Pink of the Commonwealth Environment department dated 28 September, 2012.
- a copy of the preliminary report of Dr Errol Stock dated 20 September, 2012.

We have not attached a copy of the relevant 2011 Plan of Operations referred to in the letter to Mr Pink, but your department has a copy.

Regards,

Richard Carew
Partner
Carew Lawyers

p 07 3236 1528
f 07 3236 1628
e rcarew@carewlawyers.com.au
w carewlawyers.com.au

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Department of
**Environment and
Heritage Protection**

Ref CTS 14480/12

17 OCT 2012

Mr Richard Carew
Partner
Carew Lawyers
By email: mailbox@carewlawyers.com.au

Dear Mr Carew

Thank you for your letter dated 2 October 2012 concerning Sibelco's operation of the Enterprise Mine on North Stradbroke Island.

A copy of Dr Stock's preliminary report has been provided to the Environmental Services and Regulation Division of the Department of Environment and Heritage Protection to review and take appropriate action.

Should you have any further enquiries, please contact Ms Amanda Gray, Senior Environmental Officer of the department on telephone 3896 3878.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Andrew", with a long horizontal flourish extending to the right.

Andrew Chesterman
Director-General



Australian Government

Department of Sustainability, Environment, Water, Population and Communities

Contact Officer: Drew Mclean
Telephone: (02) 6274 2384

Our reference: CAS 506
Email: drew.mclean@environment.gov.au

Richard Carew
Partner
Carew Lawyers
Level 32, 239 George Street
BRISBANE QLD 4000

Dear Mr Carew

Thank you for the information provided to date about the operation of the Enterprise Mine on North Stradbroke Island. The information provided has been useful in assisting us in our enquiry as to whether the mine is operating in contravention of national environmental law. I note that your client intends to seek relief through the Federal Court in relation to this matter. At this point of time this department is not in a position to determine if a contravention of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) has occurred or otherwise. As such the departments EPBC Compliance Section enquiries are ongoing.

To further inform the department, Sibelco Australia Ltd has been requested to provide additional information on any reliance the Enterprise Mine may place on prior authorisations, in particular claims against section 43A and 43B of the EPBC Act. Additional information about the operation and possible future expansion of the Enterprise Mine is also being sought.

Officers will be undertaking a site inspection in the coming weeks. There may be an opportunity for your clients, the Friends of Stradbroke Island and/or the Quandamooka Yoolooburrabee Aboriginal Corporation to meet with departmental staff to discuss any issues pertaining to the operation of the mine at that time. The case officer will contact you in due course to arrange a meeting if this is fitting.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Daniel Curtin'.

Daniel Curtin
A/g Director
EPBC Act Compliance Section

5 September 2013



ML No. <u>1117</u> (Office Use Only)

APPLICATION FOR RENEWAL OF MINING LEASE

Section 246 and 286
Mineral Resources Act 1989
Form Number MRA-17 Version Number 2

OFFICIAL USE ONLY	
ML No.	
PART A	
Received AT <u>SLO</u>	Received BY <u>mm</u>
DATE <u>25 NOV 2007</u>	TIME <u>8:30 AM</u> 3:30 PM
PART B	
Document accepted as an application for renewal of Mining Lease in accordance with section 81 of the Mineral Resources Regulation 2003.	
Mining Registrar (SIGNATURE)	
DATE / /	
FEE PAID	RECEIPT No
PART C	
ENTERED on register by (SIGNATURE)	
DATE / /	

The Queensland Government introduced Information Standard 42 - Information Privacy to establish a framework for the responsible collection and handling of personal information in the Queensland government public sector. Please refer to the section at the end of this form entitled "Privacy Statement" which provides details about why the personal information on this form is being collected and how it will be handled.

The original completed application document and any attachments, together with one copy of this application document and any attachments, must be submitted with the prescribed fee at the Office of the Mining Registrar for the mining district in which the land is situated.

Please print clearly in ink and use block letters.

All prescribed forms under the *Mineral Resources Act 1989* are available through the internet on www.nrm.qld.gov.au.

1. MINING LEASE AND MINING LEASE HOLDER DETAILS

Mining Lease Number	1.1	<u>1117</u>
Specify Mining District	1.2	<u>BRISBANE</u>
Company Name/Surname	1.3	<u>STRADBROKE RUTILE PTY. LTD.</u>
Given Name(s)	1.4	
ACN (if company)	1.5	<u>009 693 074</u>
Percentage	1.6	<u>100 %</u>
Company Name/Surname	1.3	
Given Name(s)	1.4	
ACN (if company)	1.5	
Percentage	1.6	%
Company Name/Surname	1.3	
Given Name(s)	1.4	
ACN (if company)	1.5	
Percentage	1.6	%
Company Name/Surname	1.3	
Given Name(s)	1.4	
ACN (if company)	1.5	
Percentage	1.6	%
Total Percentage	1.7	<u>100 %</u>

GUIDE FOR APPLICANTS

- Question 1.1**
Insert the mining lease number
- Question 1.2**
Insert the mining district.
- Question 1.3**
Specify company name or surname of applicant.
- Question 1.4**
Specify given name(s) of applicant.
- Question 1.5**
If company, what is the Australian Company Number (ACN)?
- Question 1.6**
Specify percentage of interest held by applicant.



GUIDE FOR APPLICANTS

Question 1.8

One person must be shown as the nominated applicant, upon whom any notice may be served on behalf of the applicant(s).

Nominated Person

1.8	STEPHEN BEST
-----	--------------

Address

1.9	1/58 METROPLEX AVENUE MURARRIE 4172
-----	--

Phone Number

1.10	(07) 3909 4500
------	----------------

Fax Number

1.11	(07) 3909 4501
------	----------------

E-mail

1.12	STEPHEN.BEST@ILUZA.COM
------	------------------------

Question 1.9

Specify address of nominated applicant.

Question 1.10

Specify phone number of nominated applicant.

Question 1.11

Specify fax number of nominated applicant.

Question 1.12

Specify e-mail address of nominated applicant.

Question 2.1

Enter the expiry date of the mining lease.

Expiry date of mining lease

2.1	31/10/2007
-----	------------

Term sought

2.2	21	year(s)
-----	----	---------

Reason for term sought:

2.3	MINING FOR GARNET, ILMENITE, LEUCOXENE, MONAZITE, PLATINUM, RUTILE, SILICA, SILICON, ROCK CRYSTAL, TIN ORE, ZIRCON
-----	--

Question 2.2

Enter the renewal term sought. Note: A mining lease cannot be renewed for a term longer than the period for which compensation has been agreed or decided. For example, if you agree to compensation for a five-year period then the renewed lease cannot exceed five years.

Question 2.3

Provide a detailed statement of the reasons why that term is sought.

Please attach separate list if insufficient space.

Question 2.4

Insert the Area of the Mining Lease which you wish to be renewed.

Area of Mining Lease

2.4	2331	ha
-----	------	----

NOTE: Coal or oil shale mining leases are subject to additional provisions imposed under Part 7AA of the *Mineral Resources Act 1989*.

NOTE: If you are applying to renew a mining lease for either coal, oil shale or for a specific purpose associated with coal or oil shale mining, Part 7AA of the *Mineral Resources Act 1989* places additional requirements on your application. These additional requirements apply regardless of whether the land being applied for is also subject to a petroleum lease, or an application for the grant of a petroleum lease or an authority to prospect for petroleum, or if the land is adjacent to existing petroleum tenure.

You must also complete form "**MRA-16 Additional Information for Coal or Oil Shale Mining Lease Renewal Application**" and lodge this form and all related documents with this application.

Question 3.1

Compliance with the native title provisions of the *Commonwealth Native Title Act 1993* is not necessary on land where native title is taken to have been extinguished (i.e. "exclusive" land tenures).

3. NATIVE TITLE

Was the mining lease originally granted after 23 December 1996?

3.1	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>	If YES, go to Question 3.2.
-----	------------------------------	--	-----------------------------

However, if you wish to include in your application land that may be subject to Native Title (i.e. "non-exclusive" land tenures), you must comply with the relevant native title procedure irrespective as to whether or not a native title claim is lodged over the area.

GUIDE FOR APPLICANTS

Question 3.2, 3.3, 3.4, 3.5 & 3.6

Compliance with the native title provisions of the *Commonwealth Native Title Act 1993* is not necessary on land where native title is taken to have been extinguished (i.e. "exclusive" land tenures).

However, if you wish to include in your application land that may be subject to Native Title (i.e. "non-exclusive" land tenures), you must comply with the relevant native title procedure irrespective as to whether or not a native title claim is lodged over the area.

Do you believe that the application area (including any access land) is over land tenures that may be subject to Native Title?

3.2	YES <input type="checkbox"/>	NO <input type="checkbox"/>	If YES, go to Question 3.3.
-----	------------------------------	-----------------------------	-----------------------------

If the land applied for is over land tenures where native title may still exist, is the land applied for subject to an Indigenous Land Use Agreement (ILUA)?

3.3	YES <input type="checkbox"/>	NO <input type="checkbox"/>
-----	------------------------------	-----------------------------

Is the land within the subject of the mining lease within an approved opal or gem mining area?

3.4	YES <input type="checkbox"/>	NO <input type="checkbox"/>
-----	------------------------------	-----------------------------

Was the lease granted using the Alternate State Provisions?

3.5	YES <input type="checkbox"/>	NO <input type="checkbox"/>
-----	------------------------------	-----------------------------

Was the lease granted using a section 31 agreement?

3.6	YES <input type="checkbox"/>	NO <input type="checkbox"/>
-----	------------------------------	-----------------------------

Part 4

Please provide a description of all parcels of land, including easements, the whole or part of which are covered by your application. It is necessary to provide the landowner's name and address for each parcel of land. You can obtain this information from an NR&M service centre.

You are also required to provide details of which parcels of land are within the boundaries of the surface area being applied for.

Question 4.1

Insert Lot Number of land on plan registered in Titles Office.

Question 4.2

Insert Registered Plan Number for lot.

Question 4.3

Insert Land Tenure Type (E. g. freehold, special lease, pastoral holding etc).

Question 4.4

What is the land currently used for?

Question 4.5

Name of the owner of the land.

Question 4.6

Address of the owner of the land.

Please attach separate list if insufficient space.

4. LAND DETAILS (not required if already lodged)

REFER TO COVERING LETTER

Describe the land parcels that are the subject of this application:

Lot Number	4.1		Plan Number	4.2	
------------	-----	--	-------------	-----	--

Land Tenure Type	4.3	
------------------	-----	--

Current Usage	4.4	
---------------	-----	--

Owner's Name	4.5	
--------------	-----	--

Owner's Address	4.6	
-----------------	-----	--

Lot Number	4.1		Plan Number	4.2	
------------	-----	--	-------------	-----	--

Land Tenure Type	4.3	
------------------	-----	--

Current Usage	4.4	
---------------	-----	--

Owner's Name	4.5	
--------------	-----	--

Owner's Address	4.6	
-----------------	-----	--

GUIDE FOR APPLICANTS

Lot Number	4.1		Plan Number	4.2	
Land Tenure Type	4.3				
Current Usage	4.4				
Owner's Name	4.5				
Owner's Address	4.6				

Question 5.1, 5.2 & 5.3

It is not necessary to mark out the boundary of the surface area if part only of the surface is going to be included in your application. However, the boundary of the surface area must be described by measuring the distance on the ground and by taking compass bearings. The description must be related to a boundary post by accurately measured distances and compass bearings.

5. SURFACE AREA CONNECTION AND DESCRIPTION
(not required if already lodged)

Is surface area required?

5.1	YES	<input checked="" type="checkbox"/>	NO	<input type="checkbox"/>	If YES, go to Question 5.2. If NO, go to Question 5.12.
-----	-----	-------------------------------------	----	--------------------------	--

Why is surface area required?

5.2	PURPOSE OF MINING				
-----	-------------------	--	--	--	--

Is the whole or part of the surface area required?

5.3	Whole	<input checked="" type="checkbox"/>	Part	<input type="checkbox"/>	2331	ha (read below)
-----	-------	-------------------------------------	------	--------------------------	------	-----------------

Describe the connection from a Corner Post of this application to the initial corner of the surface area.

REFER TO PLAN

Commencing from the Corner

5.4	MP 41124 & MP 40088
-----	---------------------

corner of this application

at a bearing of

5.5		for a distance of
-----	--	-------------------

5.6 metres, to

5.7		then
-----	--	------

at a bearing of

5.5		for a distance of
-----	--	-------------------

5.6 metres, to

5.7		then
-----	--	------

at a bearing of

5.5		for a distance of
-----	--	-------------------

5.6 metres, to

5.7		then
-----	--	------

at a bearing of

5.5		for a distance of
-----	--	-------------------

5.6 metres, to the initial corner of the surface area.

Question 5.4, 5.5, 5.6 & 5.7

All bearings are to be magnetic.

Please attach separate list if insufficient space.

Released under RTI Act - DEED

GUIDE FOR APPLICANTS

Question 5.8, 5.9, 5.10 & 5.11

All bearings are to be magnetic.

Please attach separate list if insufficient space.

Describe the Surface Area of the land being applied for.

Commencing from the initial corner of the surface area

at a bearing of for a distance of

metres, to then

at a bearing of for a distance of

metres, to then

at a bearing of for a distance of

metres, back to the point of commencement.

Question 5.12

If no surface area is required to gain access to the area applied for in this application, provide details of your adjoining mining lease(s) that will enable you to gain access to the proposed area.

5.12 If no surface area is required, give details of the adjoining granted mining lease(s) held by you that will enable you to gain access to the area applied for in this application.

Mining Lease Number(s)	Holder Name(s)
ML 1105	STRADBROKE RUTILE PTY LTD

Part 6

Compensation must be finalised before a renewal of a mining lease can be granted. Compensation can be provided by an agreement between the parties or by a determination of the Land and Resources Tribunal.

6. COMPENSATION AGREEMENT DETAILS

Is a compensation agreement required?

6.1	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	If YES, go to Question 6.3. If NO, go to Question 6.2.
-----	---	---

Why is a compensation agreement not required?

6.2	<input type="text"/>
-----	----------------------

Has a written compensation agreement been signed by or on behalf of the parties and been filed in the Office of the Mining Registrar, or a determination of compensation been made by the Land and Resources Tribunal?

6.3	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If YES, go to Question 6.4. If NO, go to Question 6.8.
-----	---	---

Does the agreement or determination cover the whole of the proposed term of renewal?

6.4	YES <input type="checkbox"/> NO <input type="checkbox"/>
-----	--

Question 6.1

Section 279 of the *Mineral Resources Act 1989* provides when compensation will be required. If you answer **NO** to Question 6.1, go to Question 6.2. If you answered **YES** to Question 6.1, go to Question 6.3.

Question 6.2

If compensation is not required, please provide reasons, e.g. Applicant is owner of land. Provide proof of ownership. If compensation is not required because of other reasons, please provide reasons. Go to Question 7.

Question 6.3

Please indicate whether a written agreement or a determination of compensation exists. If you answer **NO** to Question 6.3, go to Question 6.8. If an agreement or determination does exist, go to Question 6.4.

Question 6.4

A mining lease can not be renewed for a period which is not covered by the agreement or determination of compensation.

GUIDE FOR APPLICANTS

Question 6.5

A mining lease can not be renewed if the conditions of the agreement or determination have not been, or are not being, complied with.

Have the conditions of the agreement or determination been, or are they being, complied with by the holder of the Mining Lease?

6.5	YES <input type="checkbox"/>	NO <input type="checkbox"/>
-----	------------------------------	-----------------------------

Question 6.6

Complete the date of any determination by the Land and Resources Tribunal.

What was the date of any determination of compensation by the Land and Resources Tribunal?

6.6	/ /	N/A <input type="checkbox"/>
-----	-----	------------------------------

Question 6.7

Indicate whether any appeal has been lodged against the determination by the Land and Resources Tribunal.

Has there been an appeal lodged against the determination by the Land and Resources Tribunal?

6.7	YES <input type="checkbox"/>	NO <input type="checkbox"/>	N/A <input type="checkbox"/>
-----	------------------------------	-----------------------------	------------------------------

Question 6.8

Indicate whether a party has applied to have the Land and Resources Tribunal make a determination of compensation.

If you answered NO to Question 6.3,

Has a party applied in writing to the Mining Registrar to have the Land and Resources Tribunal determine the amount of compensation and the terms and conditions and times of payment?

6.8	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
-----	------------------------------	--

Question 7.1 & 7.2

If you answered NO to Question 7.1, provide reasons at Question 7.2 for not observing and performing all covenants and conditions. If there is insufficient space, please attach a statement setting out further information. Title the statement Question 7.2. If you answered YES to Question 7.1, go to Question 7.3.

7. RENEWAL DETAILS

Has the holder of the Mining Lease observed and performed all the covenants and conditions applicable to the Mining Lease and on the holder's part to be observed and performed?

7.1	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	If NO, go to Question 7.2.
-----	---	-----------------------------	----------------------------

Please provide details.

7.2	
-----	--

Question 7.3 & 7.4

If you answered NO to Question 7.3, provide reasons for non-compliance at Question 7.4. If there is insufficient space, please attach a statement setting out further information. Title the statement Question 7.4. If you answered YES to Question 7.3, go to Question 7.5.

Has the holder complied with all the provisions of this Act applicable to the holder in respect of the Mining Lease?

7.3	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	If NO, go to Question 7.4.
-----	---	-----------------------------	----------------------------

Please provide details.

7.4	
-----	--

GL E FOR APPLICANTS

Question 7.5 & 7.6

Give detailed descriptions of the known existing quantities of remaining workable mineral or mineral bearing ore, and the exploration methods that have been used to define that workable ore in an attached statement.

(Note: The Mining Registrar must be satisfied that the land the subject of the mining lease still contains workable quantities of mineral or mineral bearing ore.)

Does the Land the subject of the Mining Lease still contain workable quantities of Mineral or Mineral bearing ore?

Please provide evidence that the land still contains workable quantities of Mineral and Mineral bearing ore. Please provide evidence in an attached statement.

7.5	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
7.6	PLEASE REFER TO COVERING LETTER	

Question 7.7 & 7.8

If you answered YES to Question 7.7, list the holder(s), ML numbers and the nature of the interest held. If insufficient space, please attach a statement setting out further information. Title the statement Question 7.8.

Does any one of these holders hold, or have a direct or indirect interest in, more than two mining leases?

7.7	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	If YES, go to Question 7.8.
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Please list the holder(s), ML Numbers and nature of interest.

7.8	PLEASE REFER TO COVERING LETTER.
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Part 8

Please provide a description of all parcels of land, including easements, the whole or part of which is required for access to the mining lease. It is necessary to provide the landowner's name and address for each parcel of land covered by the proposed access.

Please attach list if insufficient space.

You can obtain this information from an NR&M service centre.

Question 8.1

If you answered YES to Question 8.1, complete Question 8.2 and then go to Part 9.

If you answered NO to Question 8.1, go to Question 8.3.

Question 8.2

Upon answering Question 8.2, go to Part 9.

Question 8.3

Insert the width of the access required in metres.

Question 8.4

Insert the description of the start point, eg. At a point on the Mt Mulligan Road 2.15km NE of the Sandy Creek crossing at co-ordinates

8. ACCESS LAND DETAILS (not required if already lodged)

Is access to this mining lease via a dedicated road that is within or abutting the mining lease area?

8.1	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>	If YES, go to Question 8.2. If NO, go to Question 8.3.
-----	------------------------------	--	---

What is the description of the dedicated road to be used for access?

8.2	
-----	--

What is the description of the access?

Width of Access required

8.3	20
-----	----

 metres.

What is the description of the start point?

8.4	AT THE INTERSECTION POINT WITH THE BITUMEN ROAD KNOWN AS THE TAZI ROAD BEING 1.1 KM ESE OF DUNWICH POST OFFICE AT COORDINATES 540691 E 6957780N
-----	---

GUIDE FOR APPLICANTS

Question 8.5

Insert the description of the end point, eg. The Southern boundary of the mining claim.

What is the description of the end point?

8.5	A POINT ON THE EASTERN BOUNDARY OF ML 1117 BEING 142° 44' AND 139.0 METRES DISTANT FROM THE NORTHERNMOST CORNER OF ML 1117.
-----	---

Question 8.6

Enter the compass bearings taken along the centreline of the access.

Commencing from the start point, thence along the centreline

8.6	PLEASE SEE	for a distance of
8.7	SCHEDULE IN COVERING LETTER	metres, thence
8.6		for a distance of
8.7		metres, thence
8.6		for a distance of
8.7		metres, thence
8.6		for a distance of
8.7		metres, thence
8.6		for a distance of
8.7		metres, thence
8.6		for a distance of
8.7		metres, thence to the end point.

Describe the land parcels over which access to this application is required:

Question 8.8

Specify lot number of parcel over which access is required. Details can be obtained from the local council.

8.8	82	8.9	USL 20272
-----	----	-----	-----------

Question 8.9

Specify the plan which the parcel of land appears. Details are available from the local council.

8.10	UNALLOCATED STATE LAND
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Question 8.10

Inset land tenure type, eg. Freehold, special lease, pastoral holding etc.

8.11	
------	--

8.12	D.N.R. and W
------	--------------

8.13	32 TANSEY STREET BEENLEIGH
------	-------------------------------

Question 8.11

What is the land currently used for?

Question 8.12

Specify the person(s) or company who owns the land parcel. Details are available from the local council.

8.8	152	8.9	SP 104035
-----	-----	-----	-----------

8.10	WATER SUPPLY RESERVE
------	----------------------

8.11	
------	--

8.12	D.N.R. & W.
------	-------------

GU FOR APPLICANTS

Question 8.13

Specify the address of the owner of the land parcel.

Owner's Address	8.13	32 TANSEY STREET BEENLEIGH
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Lot Number	8.8	116	Plan Number	8.9	SL7337
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Land Tenure Type	8.10	PERMIT TO OCCUPY
------------------	------	------------------

Current Usage	8.11	PRIVATE ACCESS ROAD
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Owner's Name	8.12	D.N.R. & W.
--------------	------	-------------

Owner's Address	8.13	32 TANSEY STREET BEENLEIGH
-----------------	------	-------------------------------

Lot Number	8.8		Plan Number	8.9	
------------	-----	--	-------------	-----	--

Land Tenure Type	8.10	
------------------	------	--

Current Usage	8.11	
---------------	------	--

Owner's Name	8.12	
--------------	------	--

Owner's Address	8.13	
-----------------	------	--

Question 9.1

Enter the name of place where the application was signed, the day of the month, the month and the year when the form is signed.

Question 9.2

Insert full name of the applicant(s).

Question 9.3

Signature of applicant(s).

Execution of Documents by an Agent

If an agent or the holder of a power of attorney is signing a document, required to be lodged by an Act, on behalf of another, the agent or holder of the power of attorney must produce current, written evidence of their authority to act at the time of lodgement.

All of the holders of the tenure MUST execute the appointment of agent or the power of attorney for the appointment or power of attorney to be effective. A company signing an appointment of agent or power of attorney must do so in accordance with the corporation law and/or the articles of association of the company.

9. SIGNATURES AND ENDORSEMENTS

We solemnly sincerely and truly affirm and declare that the information provided in this form is true and correct. We make this solemn declaration by virtue of the provisions of the Oaths Act 1867.

9.1	Signed at Brisbane this 30 th day of April	, 2007
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9.2	Stephen Graham Best Company Secretary.	9.3	[Signature]
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9.2		9.3	
-----	--	-----	--

9.2		9.3	
-----	--	-----	--

9.2		9.3	
-----	--	-----	--

QUESTION FOR APPLICANTS

Question 9.4
Insert full name of Witness.

9.4	JANICE MARGARET SLOCGETT	9.5	<i>J. Slocgett</i>
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Question 9.5
Signature of Witness.

Full name of Witness

Signature of Witness

10. ACCOMPANIMENTS

Question 10.1
Tick the appropriate boxes to indicate compliance.

The following must accompany this form:

10.1	Tick
<ul style="list-style-type: none"> • Prescribed application fee and if issued, the original Instrument of Mining Lease (if issued). 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • If the mining lease is for coal or oil shale, a proposed later development plan 	<input type="checkbox"/>
<ul style="list-style-type: none"> • If the application is lodged less than 6 months from the expiry of the mining lease, a written request for late lodgement accompanied by reasons for lodging this application within a shorter period than 6 months before the expiry of the current term of the mining lease 	<input type="checkbox"/>
<ul style="list-style-type: none"> • If the application is for renewal of a mining lease that is subject to a condition that the holder is not entitled to have the mining lease renewed, the applicant must also include a statement outlining detailed facts and circumstances as to why it should be renewed despite this condition 	<input type="checkbox"/>
<ul style="list-style-type: none"> • A statement describing the mining operations that have occurred in the current term. 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • Evidence that the land is otherwise required for the purposes for which the lease was granted. 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • A statement that the holder has complied with- <ul style="list-style-type: none"> ○ the terms of the lease; and ○ this Act in relation to the lease 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • A statement about whether the public interest will be adversely affected by the renewal 	<input type="checkbox"/>
<ul style="list-style-type: none"> • A statement detailing that the financial and technical resources available to the holder to carry on mining operations under the renewed lease are appropriate 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • A statement that the land and surface area for which the renewal is sought is of an appropriate size and shape in relation to the activities proposed to be carried out 	<input checked="" type="checkbox"/>
<ul style="list-style-type: none"> • A statement that the proposed term of the renewed lease is appropriate and having regard to the current and prospective uses of the land comprised in the lease, the operations to be carried on during the renewed term of the lease- <ul style="list-style-type: none"> ○ are an appropriate land use; and ○ will conform with sound land use management 	<input checked="" type="checkbox"/>

Released under the DEED

<ul style="list-style-type: none"> • A statement that the land the subject of the lease- <ul style="list-style-type: none"> ○ still contains workable quantities of mineral or mineral bearing ore; or ○ is otherwise required for purposes for which the lease was granted 	<input checked="" type="checkbox"/>
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11. PRIVACY STATEMENT

The Queensland Government introduced Information Standard 42 - Information Privacy to establish a framework for the responsible collection and handling of personal information in the Queensland government public sector.

The Department of Natural Resources, Mines and Water is collecting the information on this form to process your application for renewal of a mining lease. This is required by section 246 of the *Mineral Resources Act 1989* (the Act).

The Department is required to facilitate and regulate the carrying out of responsible mining activities and the development of a safe, efficient and viable mining industry in Queensland under the Act.

The Department maintains a Register under section 387 of the Act. This register contains information collected from a variety of sources, including application forms submitted under the Act. The particulars to be recorded in the register are prescribed in Part 11 of the *Mineral Resources Regulation 2003* (the Regulations).

Under section 68 of the Regulations, the public can inspect the Register between the hours of 8.30 am and 4.30 pm on business days, and anyone may take extracts from the register and acquire, upon payment of the prescribed fee, a copy of all or part of a notice, document or information held in the register. Information contained in the register includes (but is not limited to):

- the mining tenement number;
- the full name of the holder/s of the mining tenement;
- the annual rent for the mining tenement; and
- any permitted dealings relating to the mining tenement that are approved by the Minister.

Information collected on this form, whether or not it is contained in the Register, may be provided to other Queensland Government Agencies, where such disclosure is necessary for the effective management of the mineral resources and industry in Queensland. These agencies may include the Environmental Protection Agency, the Department of Primary Industries and Fisheries and the Department of Energy.

Where information provided is commercial in confidence, it will be treated as confidential and not included in the Register or be disclosed outside the agency unless the Department is legally required to do so.

For more information on Information Privacy, please contact the Privacy Contact Officer for the Department of Natural Resources, Mines and Water on (07) 389 63705.

Stradbroke Rutile Pty. Ltd.

A.C.N. 009 693 074

ML1117dc1.doc

November 9, 2008

Ms. Kate Byrne
A/Deputy Mining Registrar
Brisbane District Office (Mines)
Department of Mines and Energy
P.O.Box 1475,
Coorparoo, Queensland 4151

RE: RENEWAL APPLICATION FOR ML1117

Dear Ms Byrne,

In response to your letter dated 15th September 2008 please find attached statements pertaining to the renewal of ML1117.

1. Tenure

The background tenure of the mining lease is:

- Lot 82 on USL20272 Unallocated State Land Par Stradbroke Co Stanley
- Lot 116 on SL7337 Permit to Occupy Par Stradbroke Co Stanley
- Lot 152 on SP104035 Water Reserve Par Stradbroke Co Stanley
- Lot 21 on USL20674 Unallocated State Land Par Stradbroke Co Stanley
- Lot 12 on CP106594 Water Reserve Par Minjerriba Co Stanley
- Lot 2 on USL20675 Unallocated State Land Par Minjerriba Co Stanley
- Lot 3 on CP818899 Water Reserve Par Minjerriba Co Stanley

The background tenure of the access to the mining lease is:

- Lot 82 on USL20272 Unallocated State Land Par Stradbroke Co Stanley
- Lot 116 on SL7337 Permit to Occupy Par Stradbroke Co Stanley

2. Term of Lease

A term of 21 years for the renewal period of this lease is being applied for. The term is the same as the original grant of lease. ML1117 is one of fourteen contiguous leases that encompass our Bayside, Ibis and Enterprise mine sites, located centrally on North Stradbroke Island. The mining activities currently being undertaken at these mine sites include:

- The extraction of mineral by dredging

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- The extraction of mineral by dry mining
- The progressive tailing of previously mined land
- The progressive rehabilitation and maintenance of mined and tailed land to meet final rehabilitation criteria, prior to the surrender of the land back to the state

Mining activities specific to ML1117 that have occurred in the current term include all of the foregoing. Dredging and dry mining of mineral bearing ore is actively progressing as well as the continued placement of tailings sand and the rehabilitation of the contoured final landform.

3. Public interest

The public interest will not be adversely affected. All operations are being undertaken in accord with our existing Environmental Authority (MIM800088202) and our current plan of operations.

4. Financial and Technical Resources

Stradbroke Rutile Pty Ltd (SRPL) is a wholly owned subsidiary of Consolidated Rutile Limited (CRL) and CRL is 51% owned by Iluka Resources Limited. CRL is listed on the Australian Stock Exchange and has a market capitalisation in the order of \$250 million. CRL employs approximately 250 people, was incorporated in 1963 and has over 40 years experience in extracting mineral sands from mining leases on North Stradbroke Island.

There are no changes proposed to the current activities for our mining operations on North Stradbroke Island, during the term of the renewal period applied for.

5. Land and Surface Area

SRPL mine leases are an arrangement of 25 mine leases that are generally contiguous and encompass the island's defined mineral resource outline. As the resource definition improved, the arrangement of leases was refined to ensure the mine leases covered the extent of the resource outline. As a result, each lease varies in shape and size as they were established to abut and complement the arrangement of their adjoining leases. It was necessary for the final surface area of these combined leases to encompass the resource outline to effectively undertake the mining and tailing activities required for the extraction of minerals.

These 25 leases have been arranged to define a number of mine sites or operational areas, these being:

- Amity mine
- Bayside mine
- Dunwich operational area
- Enterprise mine
- Gordon Mine
- Ibis mine

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- Vance mine
- Yarraman mine

Along with ML1117, the following mine leases comprise the Bayside, Ibis and Enterprise mine sites:

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- ML 21
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

6. Workable quantities of mineral

[Redacted]

[Redacted] This represents a major long-term

resource for CRL. Based on current mining rates and methods it is planned that CRL will still be operating on NSI past the year 2020.

SRPL mine leases are generally contiguous leases encompassing the island's defined mineral resource outline. Consequently, each lease is at a different stage of mining as the mining equipment migrates across the various leases to mine the defined ore. Mining activity on all leases includes extraction, tailing of the voids and rehabilitation of the tailed areas. Once rehabilitation is complete, the sites are under a program of care and maintenance to achieve a standard of restoration such that the mine leases can be relinquished.

CRL is still actively engaged in an exploration, drilling program to improve the definition of the mineral resource throughout its leases.

ML1117 covers about 85% of the Bayside mine site and is mostly under a program of mine site rehabilitation.

ML1117 also covers about 35% of the Enterprise mine site, which it is planned to mine over the next 15 years.

7. Mining Program

The mining program planned for North Stradbroke Island for the term of this application will include all phases of the mining process, including the following:

Stradbroke Rutile Pty. Ltd.

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- Resource definition and exploration,
- Dredging,
- Dry mining,
- Tailing and
- Rehabilitation.

Under the current plan of operations the Enterprise mine site will be subject to the mining process for the extraction of minerals for at least a further fifteen years. After that period the site will be undergoing a program of rehabilitation and maintenance of the mined land. Operational activities to be conducted on ML1117 for the term of this application will include all of the above mining activities.

I trust that all matters pertaining to the renewal of this lease have been properly addressed and that the renewal process can proceed unhindered. I look forward to your further instructions to complete any of the outstanding matters.

Yours Faithfully,

STRADBROKE RUTILE LIMITED



David.Cruickshank Ph 07 3409 6924

Snr.Surveyor Email: david.cruickshank@iluka.com