



Mr Peter Russo MP, Chair
Finance and Administration Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Chair

I write to advise Sibelco's position in relation to certain issues canvassed during the Committee's public hearing on Thursday, 10 March 2016.

ILUA negotiations

- **Reference:** Page 33, paragraph 5: Mr Kevin Smith of Queensland South Native Title Services (QSNTS) states "*Essentially over that very intense period of 18 months there was the settling with numerous parties to the proceedings – and it included Sibelco – around the proceeding before the court, what was to go in the ILUAs and what was to go into the Indigenous management agreement*".
- **Comment:** We are concerned that Mr Smith's statement implies that Sibelco was involved in what went into the ILUA with the State. This is not the case – Sibelco was excluded from all negotiations in respect of the ILUA with the State.

Native title claim negotiations

- **Reference:** Page 33, paragraphs 7 & 8, Mr Kevin Smith of QSNTS refers to negotiations with Sibelco with respect to the Quandamooka People's native title consent determination made by the Federal Court in 2011, including a letter of comfort provided by QSNTS to Sibelco, through its lawyers Blake Dawson (now Ashurst). A copy of that letter is **attached** for the Committee's reference.
- At paragraph 8 Mr Smith states "*There was a letter of comfort addressing their needs. In accordance with those negotiations Sibelco entered into what is called a section 87 agreement under the Native Title Act to allow for the consent determination to proceed. There was an open discussion around how mining would be phased out, and Sibelco knew that, it was legally represented and **consented to the terms.***" [emphasis added]
- **Comment:** We are concerned that the statement 'consent to the terms' is vague and potentially misleading. At no point did Sibelco consent to the terms of the ILUA with the State (as above it was not a party to negotiations on the ILUA and was not provided with a copy of the ILUA). Similarly, at no point did Sibelco consent to a 2019 end date for mining on North Stradbroke Island.

- Further we are concerned that Mr Smith's statement suggests that, by accepting the letter of comfort and consenting to the native title determination, Sibelco had agreed or committed to 2019 as the end date for mining on North Stradbroke Island. That is certainly not the case.
- The letter of comfort was given purely in the context of the native title claim settlement. Aside from acknowledging Sibelco's existing interests, its purpose was to give Sibelco comfort about certain validation and consents given in the ILUA between the State and the Quandamooka People to which Sibelco was not privy.
- The letter of comfort refers to certain non-active mining leases that had already been terminated by the *North Stradbroke Island Protection and Sustainability Act 2011 (NSIPSA)* and includes details about how the ILUA with the State provides for the grant of permits to occupy to Sibelco. The leases listed in this section of the letter **do not** include the leases which are the subject of the Bills currently before Parliament.
- There is nothing in the letter or in the native title determination to which Sibelco consented about an end date of 2019 for the Enterprise Mine. Sibelco's position in relation to the proposed end date of 2019 has always been clear.
- Mr Smith refers to a deal being done at the time of the determination and an attempt to rewrite history. As described above, Sibelco was never a party to any deal.
- A native title determination is a recognition of native title rights that have always existed. Sibelco supports the recognition of the Quandamooka People's native title rights which is why it consented to the determination. It would be misleading to suggest that by consenting to a determination of native title Sibelco accepted the 2019 end date.

The implications of the State's ILUA with the Quandamooka People

- **Reference:** Page 34, paragraphs 1: Mr Smith of QSNTS makes references to the legal effect of the determination and the ILUA between the State and the Quandamooka People which are matters presently before the High Court.
- **Comment:** A determination of native title does not prevent dealings in land that affect native title. The *Native Title Act 1993 (Cth)* sets out how acts that affect native title may be validly done. Such acts may be done by the authority of an ILUA or by the application of other provisions of the Native Title Act. Therefore it does not necessarily follow, as Mr Smith asserts, that the making of the determination and entry into the ILUA prevent any other dealings in land on North Stradbroke Island without entry into a new ILUA.

Yours sincerely

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13 June 2011

Leonie Flynn
Special Counsel
Blake Dawson
123 Eagle Street
Brisbane QLD 400

By email:

Dear Leonie

Re QUD6010/1998 Quandamooka People #1 & QUD6024/1999 Quandamooka People #2 – Consent Determinations - Letter of Comfort

We confirm the Quandamooka People acknowledge the presence of existing Sibelco interests with respect to the above proceedings on North Stradbroke Island.

In relation to QUD6010/1998 Quandamooka People #1, the Quandamooka People acknowledge:

1. The following interests held by Stradbroke Rutile Pty Ltd:
 - (a) Mining Leases ML1103, ML1105, ML1109, ML1112, ML1113, ML1117, ML1118, ML1119, ML1120, ML1121, ML1122, ML1129, ML1130, ML1140, ML1153 and ML1163;
 - (b) Term lease 0/218144 over part of Lot 1 on SP156237; and
 - (c) Permit to Occupy PO 0/233333 in Lots A,B,C,D,E and F on Crown plan AP 19725.
2. The following interests held by ACI Operations Pty Ltd:
 - (a) Mining Leases ML1124 and ML7064.
3. The following interest held by Sibelco Australia Limited:

(a) ML1108.

In relation to QUD6024/1999 Quandamooka People #2, the Quandamooka People acknowledge:

4. The following interests held by Stradbroke Rutile Pty Ltd:

(a) Mining Leases ML1109, ML1121 and ML1153.

(b) Permit to Occupy 0/233333 in Lots A,B,C,D,E and F on Crown plan AP 19725;

(c) Permit to Occupy 0/218885 affecting Lot 173 SL12391;

(d) Permit to Occupy 0/232180 affecting Lot 117 SL7338;

(e) Permit to Occupy 0/232180 affecting Lot 116 SL7337; and

(f) Permit to Occupy 219075 affecting Lot 121 SL8307.

The "Validation Carve-Out" Issue

As against native title, we confirm that Mr Ian Delaney and 5 members of the Quandamooka Yoolooburrabee Aboriginal Corporation have today executed the Quandamooka Land & Sea Indigenous Land Use Agreement ("the ILUA") with the State of Queensland ("the State") that agrees, amongst other things, to the validation of any acts done by the State in the Agreement Area (see map below) prior to the date of the ILUA to the extent that they were invalidly done for Native Title purposes and can be validated by this ILUA. This includes any grants to your clients by the State that *may* have been invalidly done for Native Title purposes.



ILUA Area - Quandamooka Land & Sea ILUA

The North Stradbroke Island Protection and Sustainability Act 2011 (Qld) ("the NSIPSA")

We recognise that the effect of the NSIPA has been to the effect that the following interests formerly held by Stradbroke Rutile Pty Ltd or ACI Operations Pty Ltd have been terminated upon the Act's enactment:

- Mining Leases ML1116, ML1123, ML1132, ML1159, ML1160, ML1162, ML1164, ML1172, ML1174 and ML1175.

Schedule 15 of the Quandamooka Land & Sea ILUA

We confirm that the ILUA executed today by our clients contains the following consents to the dealings under Schedule 15 which involve your clients' interests. This includes the requested 4 permits to occupy and the "haul road" from Sibelco's Enterprise operations to Dunwich:

Item	Current Description	Location	Current Tenure	Actions	Proposed Grantee
5	Lot 173 on SL12391	South Amity	Permit to Occupy	Cancellation of current Permit to Occupy and Grant of a new Permit to Occupy for Industrial Purposes (conditions to be substantially the same as those in current PO 0/218885)	Stradbroke Rutile Pty Ltd
6	Lots A, B, C, D, E and F on AP19725	South Point Lookout	Permit to Occupy	Cancellation of current Permit to Occupy and grant of a new Permit to Occupy for Industrial Purposes (conditions to be substantially the same as those in current PO 0/233333)	Stradbroke Rutile Pty Ltd
7	Lot 116 on SL7337 Lot 117 on SL7338	South of Dunwich	Permit to Occupy	Cancellation of current Permit to Occupy and grant of a new Permit to Occupy for Industrial Purposes (conditions to be same as those in current PO 0/232180)	Stradbroke Rutile Pty Ltd
8	Lot 121 on SL8307	South of Amity	Permit to Occupy	Cancellation of current Permit to Occupy and grant of a new Permit to Occupy for Industrial Purposes (conditions to be substantially the same as those in current PO 0/219075)	Stradbroke Rutile Pty Ltd
17	Part of Lot 1 on AP 17595	South East of Amity Point (Ex ML 1160)	Unallocated State land	Grant of a Permit to Occupy under the Land Act to fulfil requirements under the environmental authority, and once land is declared a Prescribed Protected	Sibelco

				Area, permit to be granted under the NCA	
18	Part of Lot 21 on AP 19801, Part of Lot 2 on AP 19802	South of Dunwich (Ex ML 1162)	Unallocated State land	Grant of a Permit to Occupy under the Land Act to fulfil requirements under the environmental authority, and once land is declared a Prescribed Protected Area, permit to be granted under the NCA	Sibelco
20	Part of Lot 1 on AP17595, Lot 121 on SL8307, Part of Lot 131 on AP15835	South East of Amity Point (Ex ML 1172)	Unallocated State land	Grant of a Permit to Occupy under the Land Act to fulfil requirements under the environmental authority, and once land is declared a Prescribed Protected Area, permit to be granted under the NCA	Sibelco
21	Part of Lot 2 on AP 19802	South of Dunwich (Ex ML 1174)	Unallocated State land	Grant of a Permit to Occupy under the Land Act to fulfil requirements under the environmental authority, and once land is declared a Prescribed Protected Area, permit to be granted under the NCA	Sibelco
22	Part of Lot 17 on USL 20278 and Part of Lot 74 on SL 4247 and Part of Lot 1 on AP17595	North East of Dunwich (Ex ML 1123)	Unallocated State land and Reserve	Grant of a Permit to Occupy under the Land Act to fulfil requirements under the environmental authority, and once land is declared a Prescribed Protected Area, permit to be granted under the NCA	Sibelco
23	Lots 18-22 on SP112298	Haul Road – mine access road from Sibelco's Enterprise	Unallocated State land	Grant of a Permit to Occupy under the Land Act	Sibelco

		operations to Dunwich			
30	Part of Lot 1 on AP 19791 and Part of Lot 2 on SP 117361	Dunwich – mine access road as shown on attached map DWG11/113	Unallocated State land and Lands Lease	Grant of Permit to Occupy under the Land Act	Sibelco

Please contact Ms Wafiq Qalotaki of this office on matters above.

if you have any enquiries regarding the

Yours sincerely

For Shaz Rind
QSNTS PRINCIPAL LEGAL OFFICER

