



Department of  
**Environment and  
Heritage Protection**

Ref CTS 08097/16

12 April 2016

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

Dear Mr Russo

Thank you for your letter dated 7 April 2016 concerning the Finance and Administration Committee's inquiry into the North Stradbroke Island Protection and Sustainability and Other Acts Amendment Bill 2015.

In your letter you have sought further advice in relation to eight questions. I have attached the department's response to each of the questions and trust these are of assistance to the committee.

Additionally, I understand the department undertook to update the Committee on the ongoing discussions with Sibelco in relation to concerns that have been raised in submissions and at hearings. I can confirm officers from the department met with Sibelco on 19 February, 16 and 21 March and 6 and 7 April 2016. These meetings have been productive and the department now has a thorough understanding of Sibelco's concerns.

Should your staff have any further enquiries, please ask them to contact Mr Geoff Robson, Executive Director of the department on telephone 3330 5040.

Yours sincerely

  
Jim Reeves  
**Director-General**

Attachment 1 – Department's response to questions

## **ATTACHMENT 1**

In relation to the Committee's questions raised in their letter of 7 April 2016 the department provides the following responses.

### *Technical and Implementation*

#### **Questions 1 and 2**

*The Committee asks for a response with regard to implications of omitting existing section 11F.*

In the current *North Stradbroke Island Protection and Sustainability Act 2011* (NSIPS Act) section **11F Limitation of review and appeal** only relates to a decision of the Minister made under section **11D Decision on application** (i.e. a decision regarding renewal of particular mining leases). As the Committee notes, all sections 11B-11J are being omitted (including section 11D) therefore once the Bill passes there will be no ability to apply for a mining lease renewal. This means that there is no need for provisions dealing with review and appeal rights for a decision regarding renewal of mining leases.

Therefore, there will be no broader implications associated with the omission of section 11F.

#### **Question 3**

*The Committee asks for comments on concerns of stakeholders on the scope of "mining activities" allowed under various tenures.*

The "mining activities" allowed on mining leases are defined within the *Mineral Resources Act 1989*. The Bill does not propose to amend any definitions in relation to mining activities.

The restricted mine path, conditions of the environmental authority and 'non-winning' conditions on certain leases will work to restrict mining activities in certain areas of the leases while allowing for general mining operations to continue in other areas. In this regard, the Bill reinstates the policy intent of the original 2011 Act.

The rehabilitation authorisation was designed to authorise activities that would be required to be undertaken to comply with the rehabilitation and environmental management requirements in the environmental authority. The intent of the Bill is to ensure that the rehabilitation authorisation is effective in enabling the completion of all necessary activities to meet rehabilitation requirements.

#### **Question 4**

*The Committee seeks assurance that the new rehabilitation authorisation can be developed within a 12 month period.*

The department is confident there will be no gap in authorised access for the mine operator.

The State has a keen interest in ensuring that mining companies have access to land to complete environmental management and rehabilitation. The State retains the full amount of financial assurance associated with the environmental authority until rehabilitation has been completed to the satisfaction of the Department of Environment and Heritage Protection.

The Bill proposes a new rehabilitation authorisation under the *Mineral Resources Act 1989* section 344A(3). The rehabilitation authorisation was developed with the intent of supporting effective rehabilitation by ensuring continuity of access. The authorisation can be granted immediately on expiration of the lease, with no application required. It is not required to negotiate nor gain the consent of the grantee to grant the authorisation.

Given the above, it is not considered that any contingency arrangements are required, however the department is in ongoing discussions with Sibelco to discuss the arrangements for the grant of a rehabilitation authorisation for ML 1109 that may provide reassurance for Sibelco.

#### **Question 5**

*The Committee seeks further information in relation to FLP issues relating to acquisition of property without compensation.*

The explanatory notes acknowledge that the Bill reduces the term of ML 1109 without providing for compensation. However, it is considered that this can be reasonably justified given the circumstances. Mineral extraction at ML 1109 has ceased, and the only ongoing activity is decommissioning and rehabilitation. The Bill provides for a rehabilitation authorisation which can provide the necessary rights to enable the mining operator to continue carrying out these activities that would otherwise occur under the lease. Having regard to this alternative authorisation, and the native title rights and interests held by the Quandamooka People over the land, the amendment to the term of ML 1109 is considered reasonable.

The Bill also removes the ability to renew mining leases without providing for compensation. This amendment fulfils the government's commitment to remove the amendments made to the NSIPS Act in 2013.

The relevant FLP provides that compensation should be provided in respect of interference with rights. As the committee notes, Sibelco has no explicit right of renewal. While Sibelco may have held an expectation of renewal, the presence of this expectation should be considered in light of the fact that the government had previously removed its ability to renew mining leases through the original NSIPS Bill in 2011.

The Bill imposes statutory conditions on the environmental authority for Enterprise Mine to limit the area of disturbance and type of mining activities that may be undertaken. The committee notes that in effect these amendments reduce the area which can be used for mineral extraction and limit the mine operator in accessing mineral resources without providing compensation. Restricting the Enterprise Mine path will increase environmental protection and minimise potential environmental harm by containing mining activities as much as possible to already disturbed areas.

## **5a) and 5b)**

The current NSIPS Act contains section 6 that limits compensation payable arising from the operation of the Act:

### ***6 No compensation***

*No amount, whether as compensation, reimbursement or otherwise, is payable by the State to any person for or in connection with the enactment or operation of this part.*

This section is not changed by the Bill and this provision has never been the subject of legal challenge.

Section 6 is expected to be effective in ensuring that no compensation will be payable in respect of the early termination of mining leases, the removal of the ability to renew mining leases and the proposed amendments that are associated with reinstating the restricted mine path for the Enterprise Mine (including the new statutory conditions).

## **5c)**

*The committee has asked the department to comment about the consistency of the proposed statutory amendments with provisions in the Environmental Protection Act 1994.*

The NSIPS Act is a unique piece of legislation which contains a number of processes usually regulated under other Acts including the *Mineral Resources Act 1989* and *Environmental Protection Act 1994*. The department confirms that the *Environmental Protection Act 1994* provides for a defined process for the application, approval and amendment of Environmental Authorities (EAs) and that this process ordinarily includes statutory rights of consultation, public notification and comment, internal review and court appeal.

The Bill only excludes such statutory rights in relation to the statutory conditions that are to be imposed which relate to the restricted mine path. The Bill does not prevent the mining company from applying to amend its EA, other than if such an amendment would amend the restricted mine path or amend a statutory condition. The statutory conditions and restrictions on the ability to amend the EA are necessary to increase environmental protection and minimise potential environmental harm by containing mining activities on Enterprise Mine as much as possible to already disturbed areas. The Bill does not otherwise affect the existing rights of the EA holder under the *Environmental Protection Act 1994*.

The committee notes that the Bill proposes statutory provisions and definitions regarding the restricted mine path that were not in the 2011 NSIPS Act. While these provisions and definitions were not in the 2011 Act, the department advises that it is necessary to include these in the Bill because the EA no longer contains the necessary conditions to ensure that the restricted mine path as shown in the approved map is effectively implemented. The 2011 EA contained conditions to give effect to the restricted mine path map in a similar way to those provided for in the Bill. As the current EA does not have such conditions, the conditions are imposed on the EA through the operation of legislation.

## **Question 6**

### **6a)**

*The committee seeks confirmation of what rights and obligation the rehabilitation authorisation holder may have to limit access to areas.*

The holder of the rehabilitation authorisation will be able to limit access to areas subject to the authorisation because this will be necessary for the holder to comply with its health and safety obligations. The Bill amends both the *Coal Mining Safety and Health Act 1999* and *Mining and Quarrying Safety and Health Act 1999* to ensure these obligations apply to holders of a rehabilitation authorisation.

### **6b)**

The holder of a rehabilitation authorisation will be able to restrict access to areas subject to the rehabilitation authority by virtue of the operation of the *Coal Mining Safety and Health Act 1999* or *Mining and Quarrying Safety and Health Act 1999*.

The health and safety legislation provides the power to control access on the grounds of managing health and safety. Duties imposed on the holder of a rehabilitation authorisation by the relevant Act imply a corresponding power to exclude persons from areas subject to the authorisation.

### **6c)**

There are no legislative requirements for native title holders to be consulted prior to the enforcement of a rehabilitation authorisation. However, before entering the land to carry out rehabilitation activities, the Bill requires that notice be given to owners of the land. Notification to native title holders will occur as per the requirements of the *Native Title Act 1993*.

### **6d)**

In the event that a rehabilitation authorisation is granted over land subject to native title, as the holder of a rehabilitation authorisation will be able to limit access for health and safety purposes, the grant of a rehabilitation authorisation will restrict the ability of native title holders to access the land.

A rehabilitation authorisation enables access to land to carry out rehabilitation activities so that the holder can complete its EA obligations. Therefore, any impact on native title holders is consistent with the impact of existing rehabilitation obligations owed by the holder of the EA.

The grant of a rehabilitation authorisation should reduce the impacts on native title holders compared to the impacts where a mining lease is in force. This is because a rehabilitation authorisation can be granted for an area that is a subset of the original mining lease, and would therefore restrict access to a smaller area of land.

## **Question 7**

*The Committee requests advice on potential for compensation to be payable under a rehabilitation authority.*

There is potential for compensation to be payable to land owners and native title holders for the grant of rehabilitation authorisation.

The policy intent of the Bill is that, whatever compensation would be payable for the renewal of a mining claim or a mining lease, equivalent compensation should be payable for an authorisation for rehabilitation access under section 344A(3) of the *Mineral Resources Act 1989*. The mining company is responsible for paying compensation for renewal of a mining lease or a mining claim.

Proposed new section 345 of the *Mineral Resources Act 1989* provides for the payment of compensation in line with this policy intent. This section provides that:

- each person who is the owner of land the surface of which is the subject of the authorisation has a right to compensation
- compensation can be agreed between the authorised entrant and each owner, but it must be contained in an agreement which is in writing, signed by the parties, and filed with the Department of Natural Resources and Mines
- if compensation is not agreed, either party may request that the chief executive for the Department of Natural Resources and Mines refer the matter to the Land Court for determination.

In relation to the payment for a land owner, the grounds for payment of compensation are the same as those for the renewal or grant of a mining lease.

In situations where there is a native title holder there is no liability to compensate native title holders under the *Mineral Resources Act 1989* as they are not land owners under that Act. While a native title holder is entitled to compensation, any compensation for native title holders will be payable under the *Native Title Act 1993* (Cwth), not the *Mineral Resources Act 1989*.

Proposed section 348 of the *Mineral Resources Act 1989* provides that where compensation is payable, it is the holder of the authorisation, not the State who is responsible to pay any compensation to the native title holder.

### **Question 8**

*The Committee invites comment on the FLP of 'equality under the law' in regards to clauses 27 and 30 of the Bill.*

Clause 27 amends the *Mineral Resources Act 1989* to insert new subsections in the existing section 344A to allow for a rehabilitation authorisation to be granted over the site of a former mining lease or mining claim.

Any EA holder who meets the requirements set out in this clause can be granted a rehabilitation authority. The committee notes that subsection (5) limits the ability to issue the authorisation to circumstances where the mining tenement is not able to be renewed for a reason out of the control of the operator. Where a mining tenement is able to be renewed, rehabilitation activities will be able to be completed under the mining tenement. Rather than treating persons differently, clause 27 ensures that all EA holders, whether they also hold a mining tenement or not, are able to comply with their rehabilitation obligations.

Clause 30 amends the *Mineral Resources Act 1989* to insert compensation provisions for the new rehabilitation authorisation.

These provisions do not result in the different treatment of persons. The compensation provisions are drafted so that compensation payable to landowners for the grant of rehabilitation authorisation is similar to that required when granting or renewing a mining claim or mining lease.

The policy intent of the rehabilitation authorisation is that it mirrors a mining lease because the activities that would occur under the authorisation would typically occur under a mining lease. A rehabilitation authorisation would only be granted in particular circumstances where a lease could not be renewed and alternative access is required.

Therefore the Bill ensures that mining lease holders undertaking rehabilitation and rehabilitation authorisation holders undertaking rehabilitation are treated in substantially the same way under the law.