



Friends of Stradbroke Island Association Inc.  
PO Box 167  
POINT LOOKOUT, Q 4183

17 November, 2014

## Submission to the Senate Select Committee on Certain Aspects of Queensland Government Administration related to Commonwealth Government Affairs

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### **Index to documents attached to submission**

1. Map of North Stradbroke showing the three sand mines
2. Opinion of Tim Carmody, SC dated 4 April 2012
3. Transcript of Campbell Newman announcing LNP Stradbroke Policy on ABC radio
4. FOSI submission to Queensland Parliamentary Committee dated 28 October 2013
5. Extract from Mining Company's Environmental Studies Report 2003
6. Copy 2010 legal opinion of Peter Callaghan, SC and Andrew Boe
7. Copy FOSI letter to Campbell Newman dated 13 April 2012
8. Copy FOSI letter to Campbell Newman dated 16 July 2012
9. Copy article by Cameron Costello published by Straddie Island News in July 2014
10. Copy joint letter ACF, FOSI and QYAC to Federal Environment Minister in July 2013



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### 1. INTRODUCTION

We submit that an examination of recent events relating to North Stradbroke Island, the world's second largest sand island just 40km from the Brisbane CBD, will assist the committee to inquire into and report on, in particular, (1) (c), (d) and (e) of the terms of reference of this Inquiry.

We will address each of these terms of reference, but as an understanding of the recent background is essential in our submission, we will address this first in some detail. We also request the committee to have regard to our attached 2013 submission to the Queensland parliamentary committee.

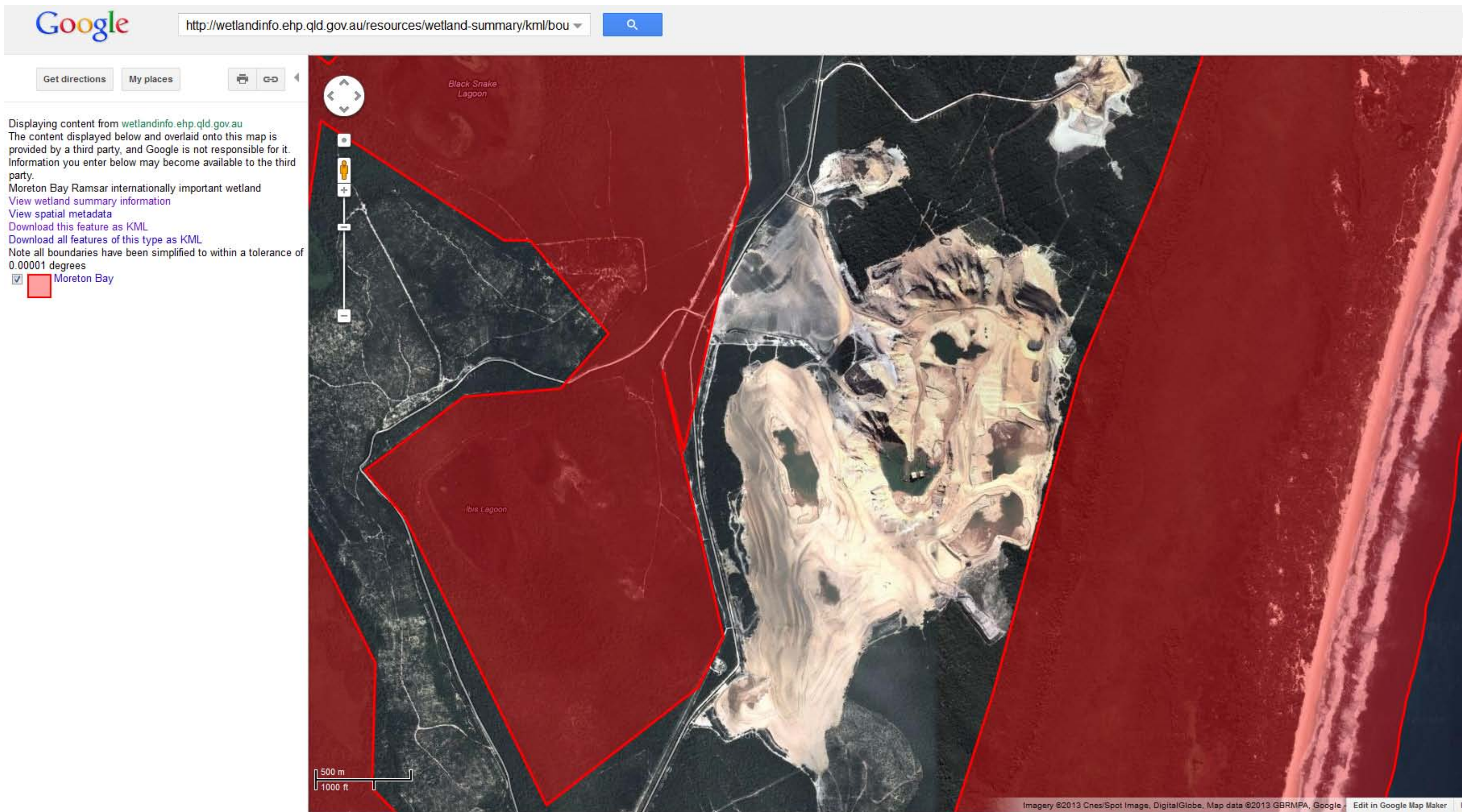
Much of the background could have been included under one or more of the terms of reference headings, but we decided to provide it at the outset in a generally chronological order as we considered this would provide the most assistance to the committee and best counter the significant misinformation about North Stradbroke issues. We also provide links via highlighted words, to websites providing some additional information and commentary.

### 2. BACKGROUND

Sand mining has already caused serious damage to North Stradbroke, including to areas outside mining leases and including Ramsar protected areas. Some of the damage has been admitted by the mining company in Plans of Operations and other documents it has lodged with the Queensland Government. Continued sand mining is likely to cause further significant impact to the island's protected wetlands and listed species. The overlay map on the next page is a dramatic illustration of the proximity of the Enterprise mine to Ramsar areas.

This lack of protection contrasts with the actions of successive Federal governments in the 1970's to protect the world's largest sand island from sand mining. The Fraser Island Inquiry was set up by the Whitlam government but the Inquiry's finding that sand mining caused "major permanent and irreversible environmental harm" was accepted by the Fraser government (Prime Minister Fraser, Federal Parliament, 10 November, 1976). It stopped sand mining within weeks of receiving [the Report](#). The Queensland government lobbied for a two year transition away from mining, but this was [rejected](#).





**Figure A2 - 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/ramsar-wetland-moreton-bay/> viewed 27/5/2013



Few would question that protecting Fraser Island was the right thing to do – and the regional economy has also benefited, with tourism a major industry. Fraser Island is on most tourists' agendas. North Stradbroke's future could be similarly bright, if tourism is managed properly. It is more accessible and has special features that even Fraser does not eg a genetically distinct natural population of koalas. A recent edition of the Queensland Museum's "Wild Guide to Moreton Bay" recognises (at p.42) that North Stradbroke still has the most diverse array of flora and fauna among the Moreton Bay Islands. But Stradbroke's chances of a successful future are being diminished in proportion to the amount of additional sand mining permitted by governments.

There is growing opposition to sand mining a special island only 40km from the Brisbane CBD. The ever increasing population of the nearby mainland and the recognition of the need for an increase in accessible national parks and open space to enhance psychological and physical well-being are two contributing factors. Most of the national park declared prior to the last State election is virtually inaccessible to the public due to mining leases preventing access and some of it is mined land in need of rehabilitation work.

### 2.01 The three sand mines on North Stradbroke

The **attached** map shows the location of the three mines, owned by Sibelco Australia Limited, a subsidiary of a privately owned Belgian company. The "Yarraman" mine, near Point Lookout, is scheduled to close next year in accordance with long standing mining company plans. Last year, despite 2025 being its legislated end date, Sibelco [announced](#) the closure of the silica mine known as "Vance" due to various competition related factors. The 13 employees lost their jobs. The company denied the announcement was connected with the ongoing trial of [criminal charges](#) against it relating to the [unlawful removal](#) and sale of up to \$80 million worth of non-mineral sand from that mine over two decades.

It follows that the third mine, which Sibelco calls "Enterprise" is the central mine.

### 2.02 The North Stradbroke Island Protection and Sustainability Act 2011

In April 2011 the Queensland Government enacted the North Stradbroke Island Protection and Sustainability Act. The [explanatory notes](#) to the Bill stipulated at page 2 (6<sup>th</sup> paragraph) that the legislation would extend key expired mining leases, including to permit mining to continue at the Enterprise mine until 31 December, 2019, but subject to a restricted mine path. At page 6 of the explanatory notes it stated:

"the holder of a mining lease does not have a right to renewal and the Bill also renews a key lease at Enterprise Mine, which expired over three years ago, prior to the current leaseholder acquiring the mine and without which the mine would not be able to operate"

Sibelco, had wanted the leases extended to 2027 to coincide with its planned end to mineral sand mining. See the [letter](#) from CRL (a Sibelco subsidiary) to the ASX dated 13 May, 2009.

However, the special legislative renewal of these leases by-passed our written objections to renewal and extinguished our legal rights and the rights of other opponents, including indigenous owners, to challenge any renewals in the Supreme Court.

In 2012, prior to his appointment as a Judge and later Chief Justice of Queensland, Tim Carmody SC provided an opinion to our lawyers which confirmed their opinion that Sibelco had benefited from the legislation and that the opponents to renewal of expired mining leases had been [the real victims](#) of the legislation because their legal rights were extinguished by the legislation. We **attach** a copy of the Carmody legal opinion.

Also, other experienced counsel had advised that in the special circumstances applying to North Stradbroke, there were good prospects of overturning any renewals in the Supreme Court, had that right not been extinguished by the former government. It was known that we, indigenous owners and other environment groups were prepared to take on court challenges. For example, several of us took on the mining company over another issue and [won in court](#).

### 2.03 The close connection between the April 2011 North Stradbroke Act and native title

Importantly, the explanatory notes revealed a close connection between the legislation and the “imminent” determination of native title. Page 1 of the explanatory notes, for example, stated:

The primary objective of the Bill is to substantially end mining activities (including all heavy mineral sand mining) in the North Stradbroke Island Region (North Stradbroke and Peel Islands) by the end of 2019, and to end all mining in the Region by 2025, to:

- protect and restore the environmental values of the region; and
- facilitate the staged creation of areas that are to be jointly managed by the State and the Traditional Owners of the region.

For many years, there has been public discussion and debate about the interconnected issues of mining, Aboriginal land rights, and the environment on North Stradbroke Island (NSI). The Queensland Government decided that it was in the public interest to provide a balanced resolution of these issues to provide certainty to all stakeholders.

In parliamentary speeches supporting the Bill, both the Premier Anna Bligh and the relevant Minister, Kate Jones, endorsed and expanded upon these objectives. For example, on 22 March (Hansard, p. 611) the former Premier Anna Bligh told parliament:

As a result of this consultation and our determination to stop mining in this beautiful place, I now announce that all mining will cease on North Stradbroke Island by 2025. Most significantly, Yarraman Mine, which accounts for 47 per cent of all mining, will close in 2015. Further, the mine known as Enterprise Mine, which accounts for a further 47 per cent, will close in 2019. That means that by 2021, after a two-year decommissioning and rehabilitation period, 75 per cent of the island will be declared national park. Leading up to 2019, Enterprise’s operations will be constrained and limited to minimize the environmental impact within the existing lease areas. In 2025 the closure of Vance Mine, which accounts for the final six per cent of mining, will be the final piece of the puzzle. In 2019, 94 per cent of mining on North Stradbroke Island will cease. North Stradbroke Island is a place that is special to many generations of Queenslanders. It is also a place of deep cultural heritage for which the Quandamooka people are the custodians. That is why the Quandamooka people are central to our government’s vision for North Stradbroke’s future. We have been working closely with them to negotiate an Indigenous land use agreement...

The Queensland Government, through its Premier, could not have made its position clearer to all Queenslanders – the Enterprise mine... “*will close in 2019*”, she told parliament. The relevant Minister, Kate Jones, was similarly emphatic in parliament on the central issue of the closure date of Enterprise mine. However, it appears that this clarity may have been lacking when it came to the wording of the Indigenous Land Use Agreement (ILUA), the contract signed in June, 2011 between the Quandamooka people and the Queensland Government, necessitating the High Court action.

The Quandamooka people, who are seeking a declaration that the Newman amendments are invalid under the Constitution, say that the amendments breach the terms of the ILUA with the Queensland Government – see below. The State Government denies this.

#### 2.04 The Federal Court confirms native title rights and interests

Three months after the North Stradbroke legislation was passed, by consent of all parties, including Sibelco and the State Government, the [Federal Court](#) on 4 July 2011, recognised the Quandamooka peoples' native title rights over most of the island, including all areas under mining lease. The exercise of the relevant native title rights over land under mining lease was suspended, but only until expiry of the leases – in the case of the Enterprise mine leases this was fixed by the legislation, at 31 December, 2019.

#### 2.05 Campbell Newman's LNP sand mining policy announcement on ABC radio

In 2011 the LNP and Campbell Newman, who was not then a member of parliament, generally opposed the Bligh government's North Stradbroke policies and created a vague impression that the Bligh government's legislation would not be safe if the LNP were elected to government – see [Australian newspaper](#) article quoting Mr Newman. However the [LNP did not vote against](#) Labor's North Stradbroke legislation, contrary to their criticism of it.

[According to](#) the same Brisbane Times article, Minister Kate Jones said of Newman:

"He wants the people of Ashgrove to think that he supports the end for sand mining on North Stradbroke Island, but he wants the mining companies to think he is on their side," she said.

There was no actual policy announcement by the LNP until January, 2012 when Campbell Newman announced the policy on Steve Austin's popular morning talk-back radio program. **Attached** is a transcript of what Mr Newman said. An audio is available if required.

Although Mr Newman's policy announcement was vague, he stated that an LNP government would not extend mining, it would "restore rights" taken away by Labor and that Sibelco would not be given anything more. This is an extract:-

"...the premise has been put to me as though we're giving something more than was originally there and that is not the case... 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."

Had he restored rights taken away by the previous government, our restored right to legally challenge any renewal of mining leases under existing mining law may have resulted in mining coming to an immediate end at the Enterprise mine as the key expired leases renewed by the North Stradbroke Act were critical to mining continuing.

#### 2.06 The meeting/s between Campbell Newman and Sibelco's CEO

At a parliamentary committee hearing on October 30, 2013, the CEO of Sibelco, Campbell Jones, was asked whether he had met with Campbell Newman before or after the 2012 State election. His [answer](#) (p.9 of the transcript) was that he had met with Mr Newman "on maybe one or two occasions".

Mr Newman was asked in parliament the same day about his meeting/s with the CEO of Sibelco. After prevarication, he eventually answered the question:-

“The point is that our position was clear. We said we did not support the decision and that was made perfectly clear. I cannot even recall when I met the head of Sibelco, but I simply told him what was in the public domain, that we had made that decision. If he chose to support my election campaign, it was all declared and properly done”. (see Hansard p. 3702)

The rest of Mr Newman’s answer effectively confirmed that he did not publicly resile from his pre-election policy announcement and his awareness of this fact. In his attempt to justify his broken promises to restore rights and not give Sibelco anything more, he refers to statements made by the backbencher from Cleveland, but none from himself.

### 2.07 Sibelco’s multi-million dollar campaign against Anna Bligh and Kate Jones

Sibelco’s very public attack on the Labor government’s 2019 end date for mining at the Enterprise mine lasted many months. It included full page newspaper advertisements, cinema advertising, a web site, social media and 108 prime time television advertisements. A public relations company report [tabled in parliament](#) by Labor’s Jackie Trad in November 2013 is very revealing. Sibelco’s multi-million dollar campaign against Labor was managed by Rowland, a PR company owned by an associate of Mr Newman’s.

Close to the 2012 State election, Sibelco’s campaign included almost 100,000 anti-labor letters sent to the homes of voters mainly in the Ashgrove electorate being contested by Campbell Newman. The sitting member was Kate Jones, the Minister responsible for the North Stradbroke legislation. The letters attacking Kate Jones and Anna Bligh were supposedly organised by “[Straddie Mothers](#)” but doubts soon emerged and it was revealed by one of the supposed authors to [the Australian](#) newspaper that Sibelco was behind the letters.

Seven months after the State election, after questions were raised with the Electoral Commission about Sibelco’s undisclosed support for the LNP and Campbell Newman, [Sibelco finally declared](#) that it had spent \$91,840 on the letter drops for Campbell Newman.

Sibelco did not declare any other expenditure, despite its multi-million dollar campaign against Labor as disclosed later by the Rowland report.

Despite Sibelco’s campaign in his favour, at no stage prior to the election did Campbell Newman resile publicly from his policy announcement that an LNP government would restore rights taken away by Labor and would not give Sibelco anything more.

### 2.08 Mines Minister Andrew Cripps confirms the truth about the LNP’s election policy

No public announcement concerning the LNP’s intentions was made for more than a year after it was elected. The first hint of the LNP’s intentions came on the [18<sup>th</sup> July, 2013](#) via the ABC’s 7.30 program. But, the next day, the Mines Minister Andrew Cripps, when giving evidence to a Queensland parliament estimates hearing, in effect admitted that the LNP did not give a pre-election commitment to extend sand mining. From page 8 of the [transcript](#):-

Mr CRIPPS...I am pleased to advise the committee that the government is well on track to implementing its election commitment to provide a more realistic end to sand mining activities on North Stradbroke Island.

Ms TRAD: You mean a longer time frame—more sand mining?

Mr CRIPPS: It may involve a longer time frame, but the principal commitment of the Newman government, that we made when this legislation was first introduced in 2011 by the previous government and during the election campaign, was that the LNP believed in providing for a smoother transition from the current sand mining activities to other economic activities that would provide jobs for people living on that island.

In a clear reference to Campbell Newman's pre-election policy announcement on ABC radio, Labor's Jo Anne Miller then asked Cripps this question (at p.26):-

Mrs MILLER: ... the Premier assured the public prior to the last election that he would not give Sibelco anything more than what they had prior to the North Stradbroke Island Act and would not extend those mining interests. Can the minister assure us that Sibelco will not be given an extension in area or time for any of the mining leases on North Stradbroke Island?

Cripps did not respond to the references to the Premier's public assurances, but he could not deny them after all. He would have known there would be a transcript of the Premier's policy announcement on ABC radio. His answer was consistent with his previous answer to the Trad question. It needs to be remembered that a false answer could have resulted in a charge of lying to a committee, under the Queensland Criminal Code – the same offence being investigated by Queensland police in relation to committee evidence given by the head of the Crime and Corruption Commission, Mr Ken Levy. This issue is in the public domain.

In answering a subsequent question, Cripps eventually referred to Sibelco's post-election 2035 proposal:-

(Sibelco)... have presented me with an alternative proposal that involves a scaled-back mining proposal consistent with extending the mine life but that provides better environmental outcomes in the long term. The proposal involves additional benefits to the Quandamooka people. I reiterate that that is a proposal that has been put forward by Sibelco for us to consider. It is not necessarily what the Queensland government will implement. I have urged, as I said previously, the Quandamooka people, represented by QYAC, to consider the potential benefits that the plan represents. If the plan that has been put forward by Sibelco is implemented, there will be an end to all sandmining on North Stradbroke Island by 2035... (Transcript p.29).

One thing is certain. From the mouth of his own Mines Minister, it is obvious that Campbell Newman did not have a 2012 election mandate to extend sand mining, let alone to 2035 as would be claimed (falsely) by the Premier in November, 2013. We return to this issue below.

The dates and other details of Campbell Newman's meeting/s with Sibelco's CEO are still not known. For example, it is not known whether a meeting took place before or after Mr Newman's January 2012 policy announcement on ABC radio. We submit that a thorough investigation is required to get to the bottom of the affair and the Premier's broken election promises to restore rights and not give Sibelco anything more.

### 2.09 LNP Bill to amend North Stradbroke legislation

In October, 2013 the LNP introduced into parliament a Bill to abolish the restricted Enterprise mine path and allow Sibelco, in 2019, to extend sand mining at the Enterprise mine to 2035.

FOSI's submission opposing the Bill was one of many. We were not then aware of some issues, eg Cripps' evidence to the parliamentary committee in July, 2013 referred to above. However,

there were existing good grounds for submitting that the committee should recommend postponement of the Bill for the reasons stated in our conclusion, which in summary were:-

- 1.To allow Mr Newman to further consider honoring his pre-election public promises to restore rights and not to give Sibelco anything more;
- 2.To allow the Attorney-General to further consider ending the protection of Sibelco from more serious criminal charges by facilitating the prosecution evidence in the Magistrates court criminal trial being provided to the Director or Public Prosecutions to enable him to decide whether he agrees with the legal opinion from experienced senior lawyers that there is a prima facie case of stealing and fraud against Sibelco for unlawfully selling non-mineral sand;
- 3.To await the conclusion of the criminal trial in the Magistrates Court and, if indictable offences are charged as a result of 2, the conclusion of those proceedings;
- 4.To await the conclusion of the commonwealth investigation into Sibelco's non-compliance with the EPBC Act and its decision on what enforcement action, if any, is to be taken;

We **attach** a copy of our submission on the Bill.

The amending legislation was passed at about 2am on 21 November, 2013.

#### 2.10 Newman amendments passed despite no environmental assessment beyond 2012, the unresolved criminal charges against Sibelco and the ongoing Commonwealth investigation into the legality of the Enterprise mine

The legislation abolished the 2011 Act's restricted mine path and allowed, in 2019, a further extension of sand mining without any environmental assessment of mining beyond 2012. The company's [Environmental Studies Report](#) produced in 2003 and submitted for government approval prior to mining commencing in 2004 was expressly stated in section 1.2 of the Report to be for "Stage 1". Table 1-1 (Life of Enterprise mine) expressly indicated that Stage 1 would be from 2004 to 2012 and Stage 2 would be from approximately 2013 to 2023 (see **attached** extract). The mining company's own environmental report made it clear that Stage 2 of the proposed mine was "*subject to further mine optimisation, feasibility and environmental assessment*".

The three volume 2003 ESR was submitted by Sibelco to the Committee examining the Newman Government's Bill in 2013 and was released to the public by the committee.

In its submission on the Bill, FOSI drew the government's attention to the glaring omission of there being no environmental assessment whatsoever for any mining beyond 2012 and that the company's three volume report was out of date. This issue also was simply ignored by the committee and the government.

The Queensland Government also was made fully aware of the ongoing commonwealth investigation into the EPBC Act non-compliance issue and was provided with a copy of Dr Errol Stock's report which concluded that the Enterprise mine has had and was likely to continue to have a significant impact on the 18 mile swamp Ramsar area to the east of the mine. It was also advised of Dr Stock's preliminary opinion that the mine had caused the death of a large area of vegetation in the Ramsar area to the west of the mine.

It was also fully aware of the unresolved criminal charges, the legal opinion that there was a prima facie case against Sibelco on more serious criminal charges and the refusal of the



Attorney-General to seek the advice of the DPP as to whether Sibelco should be charged with those more serious offences. A copy of the legal opinion from senior counsel is **attached**.

### 2.11 Why did Campbell Newman mislead the parliament over his pre-election policy?

During the debate on the controversial Bill, Mr Newman claimed that prior to the 2012 State election,

*"..everyone knew I was saying that it would continue in accordance with the original leases till 2035"* ( Hansard, 20 November, 2013 p.4105)

In paragraph 2.08 above, we demonstrate, with the support of the estimates hearing evidence of his Mines Minister, Andrew Cripps, that Campbell Newman did not go to the election with a policy to extend sand mining, let alone to 2035. His ABC radio policy announcement in January, 2012 was that he would restore rights taken away by the former government and would not give Sibelco anything more.

Sibelco did not have a right to renewal of expired mining leases. It had a right to have its existing applications to extend sand mining leases to 2027 considered, with the government's decision subject to judicial review. This was confirmed in 2012 by Tim Carmody SC (now the State's Chief Justice). A copy of his opinion is attached. A copy of the Carmody opinion was sent to the Premier with our letter to him of 13 April, 2012. We **attach** a copy of our letter.

A few months later, the Queensland Law Society (QLS), in line with Mr Carmody's advice, [corrected its submission](#) to parliament on the original Stradbroke Bill. We wrote again to the Premier on 16 July, 2012 attaching a copy of the QLS correction. We **attach** a copy of our letter and attachments, including a copy of the QLS letter. We continued to seek a meeting with Mr Newman to discuss the restoration of our right to challenge, in court, the renewal of the key Enterprise mining lease, ML 1117 in particular. Mr Newman did not respond to our requests.

Does this background explain Mr Newman's attempt to re-write history concerning his pre-election policy? Does he want to cover up his broken promise to restore rights and his legislative favors for Sibelco in breach of his promise not to give the company anything more, by (falsely) claiming that the legislation was simply fulfilling an election commitment?

### 2.12 QYAC's High Court action to declare the Newman amendments invalid

The court action was [launched](#) by the Quandamooka Yoolooburrabee Aboriginal Corporation(QYAC), in July, 2014. The action seeks a declaration from the High Court that the Newman amendments to the North Stradbroke Act are invalid under the Australian Constitution. The Quandamooka opposition to the legislation was explained by the CEO, Cameron Costello, in an [SBS interview](#) at the time the Bill was before the parliament. We also **attach** a copy of an article by Mr Costello published in July 2014 in the Straddie Island News. The article explains the background to the decision to take legal action and that the decision was unanimously supported by the QYAC board and the Elders in Council. Of course FOSI also supports the action to stop the environmental destruction flowing from the amendments.

## 3. TERM OF REFERENCE (1)(c)



As mentioned in the introduction, we submit that North Stradbroke Island events are relevant to three terms of reference of this Inquiry – (1)(c), (d) and (e). We will address each in turn although there is some overlapping among them and also much of the background in the previous section is relevant and needs to be considered with this section of our submission.

(1)(c) approval process for the development of projects for the export of resources or services insofar as they are administered by the Commonwealth or under a bilateral agreement with the Commonwealth;

According to Sibelco Australia Limited, the island’s mining company, the mineral sands mined on North Stradbroke Island are for export. This is a quote from its [website](#):-

We operate the longest continuously operating sand mining operation in Queensland, dredging around 50 million tonnes of sand per year. We are a major player on the world minerals stage, producing around 70 000 tonnes of rutile, 50 000 tonnes of zircon and 150 000 tonnes of ilmenite each year for export to over 33 countries, including the United Kingdom, the United States and Japan.

The Federal government’s responsibility to protect the environment, especially places of national environmental significance, is confirmed by the very first object of the *Environment Protection and Biodiversity Conservation Act 1999*.

*Section 3:*

*(1) The objects of this Act are:*

*(a) to provide for the protection of the environment especially those aspects of the environment that are matters of national environmental significance;*

As shown in the [map of the site](#), approximately half of North Stradbroke Island is part of the Moreton Bay declared Ramsar wetland listed in [October, 1993](#) under the RAMSAR convention for the protection of internationally important wetlands.

Under the EPBC Act, a declared RAMSAR area is a matter “*of national environmental significance*”.

3.1 Requirement for approval of activities likely to have a significant impact on a declared Ramsar wetland or on listed or migratory species

The EPBC Act has a separate sub-division requiring approval and supposedly substantial penalties for non-compliance. We note that the Federal Government’s [significant impact guidelines](#) state (at p.3) that “likely” in this context does not mean a greater than 50% chance of happening ... “*it is sufficient if a significant impact on the environment is a real or not remote chance or possibility*”.

We would have thought that the opinion of a known expert on North Stradbroke’s hydrology that the Enterprise mine has caused and is likely to continue to cause a significant impact to the Ramsar areas adjacent to the Enterprise mine would be sufficient for the Commonwealth to immediately require a referral from the company so that its impact can be assessed under the EPBC Act. The commonwealth’s reluctance to do so should cause concern in our submission.

On reading the background document, it will be understood that our submission primarily relates to the Enterprise mine, which commenced in 2004, and the RAMSAR areas adjoining

this mine. The map following page 1 of our submission, is a dramatic illustration of the proximity of the mine to RAMSAR areas.

The EPBC Act has so far failed to protect the island or its declared Ramsar wetlands from the impacts of sand mining. Even without knowledge of past damage to island water bodies from sand mines or the opinion of Dr Stock, common sense would appear to dictate that a referral of the Enterprise mine was appropriate before commencing to mine.

### 3.2 Enterprise mine commenced in 2004 without approval under EPBC Act

Prior to commencing to mine at Enterprise in 2004, the company did not refer its proposed action or obtain Federal Government approval under the EPBC Act.

This is difficult to comprehend, given the proximity of the mine to Ramsar wetlands and given the number of previous environmental incidents resulting in damage to areas outside the immediate area being mined, including areas off lease. A summary of these environmental incidents, compiled mainly from mining company documents, can be found [here](#) on the savestraddie.com website.

We also note that the company's 2003 Environmental Studies Report acknowledges, in Table 3-22, the recording of several fauna species listed as vulnerable or migratory under the EPBC Act. The potential impact of the mine on these species, which are matters of "national environmental significance", and the non-referral of the mine under the EPBC Act also requires investigation by the commonwealth in our submission.

### 3.3 Correspondence with Federal Environment Department concerning Ramsar area impacts

In September, 2012 our lawyers wrote to the Commonwealth Environment Department and sent the department an expert report from Dr Errol Stock, a geologist and an expert on the hydrology of Stradbroke, which concluded that the Enterprise mine had caused and was likely to continue to cause significant impacts to the Ramsar area known as the 18 mile swamp.

The issue was also drawn to the then Minister's attention via a joint letter from FOSI, the Australian Conservation Foundation and the island's Quandamooka Yoolooburrabee Aboriginal Corporation (see **attached**).

It took a year for the Department to respond formally to the initial correspondence from our lawyers in September, 2012. It has hinted that the mining company may have had all of its approvals in place for this mine prior to the commencement of the EPBC Act, but it has failed to provide any information as to how that unlikely scenario could be so. Our legal advice is that the evidence indicates that the company did not have all its approvals in place until shortly before it commenced mining in 2004 and the company's own official reports to government confirm this. It is also worth noting that during an exchange of letters with our lawyers, Sibelco's lawyers did not suggest anything to the contrary. This information was conveyed to the department, which appears to have accepted it as Department investigators came to Queensland last November to carry out investigations on the island and met with FOSI representatives in Brisbane.

We have recently discovered that in 2009, in [a submission](#) to an independent review of the EPBC Act, another Stradbroke Island organisation raised similar EPBC Act concerns with the Department, with unsatisfactory responses from the department. For example, under the heading “Problems with implementation of the EPBC Act” the submission stated.. “*there are internal problems in administering the Act and responding to stakeholder concerns*”.

### 3.4 Further report concerning destruction of vegetation in Ramsar wetland near mine

In the near future, we expect to forward to the Department a further detailed report from Dr Stock relating to damage to Ramsar areas to the west of the Enterprise mine, caused in his opinion by the Enterprise mine. At least 95 hectares of land was affected, including the killing of all vegetation in approximately 80 hectares of Ramsar protected wetland. This information was conveyed to the department last November at the meeting, but Dr Stock’s report has been delayed, mainly due to ill-health. In any case, this issue has nothing to do with the question of pre-EPBC Act approval, which should have been determined by the department years ago. Given past form, we have concerns about the department enforcing the EPBC Act.

### 3.5 No management plan for the Moreton Bay Ramsar site 21 years after declaration of area

With the exception of a management plan for Moreton Island, a section only of the site, there is [no management plan](#) for the site. This is astonishing and appears to breach Australia’s obligations under the Ramsar convention and the requirements of the EPBC Act. The EPBC Act (s.333) requires, as noted in the [department’s fact sheet](#),

“The Commonwealth must also use its best endeavours to ensure that management plans are in place for Ramsar sites within state or territory land and waters”

As 21 years has elapsed since the declaration of the Moreton Bay site, the Federal government has clearly failed North Stradbroke Island and the balance of the site. This failure to finalise and implement a management plan for the site should be recognised as a national disgrace and urgent action should be taken to remedy it.

### 3.6 Conclusion and request for inquiry into non-compliance with international obligations

We submit that given the history of the department’s attention being drawn to the EPBC Act compliance issue at the Enterprise mine, that the committee should inquire into the issue in depth or recommend the establishment of a separate inquiry into the department’s application of the EPBC Act to North Stradbroke Island.

We also submit that the committee should inquire into the failure of the Federal Government to carry out its obligations to ensure that a management plan for the Moreton Bay site has been prepared and implemented. As part of this inquiry, we submit that the committee should examine whether the Commonwealth’s failure has aided the Queensland Government’s neglect of North Stradbroke Island’s environment.

## **4. TERM OF REFERENCE (1)(d)**

(1)(d) the extent to which Queensland State Government policies and practices are consistent with Australia’s obligations under international environmental law instruments;

We submit that State government policies to use special legislation to renew expired mining leases on North Stradbroke Island and extinguish the usual legal rights of opponents to renewal are not consistent with Australia's obligations to protect declared Ramsar wetlands.

Successive Queensland State governments have shown no regard for the usual procedures for the consideration of applications for the renewal of expired mining leases under s.286A of the Mineral Resources Act. In 2011, rather than decide existing applications for the renewal under the existing expired lease laws, the government used special legislation to renew key expired leases, extinguishing pre-existing objection and judicial review rights of conservationists and indigenous owners opposed to renewal.

In 2013, the government amended the 2011 legislation by abolishing the restricted Enterprise mine path and allowing, in 2019, Sibelco to apply to extend mining leases while again extinguishing the objection and judicial review rights of those opposed. It did this despite:-

- (a) The resulting broken election promises by the Premier to restore rights and not give Sibelco anything more;
- (b) the ongoing criminal trial of charges against Sibelco relating to the unlawful removal of non-mineral sand with a retail value of many millions of dollars;
- (c) the evidence of Sibelco being protected against more serious charges of stealing and fraud, in lieu of or in addition to the charges alleging lack of permits;
- (d) being aware of the ongoing Commonwealth's investigation into the legality of the Enterprise mine under the EPBC Act;
- (e) being aware of the numerous past incidents of damage to Stradbroke water bodies from sand mining;
- (f) there being no environmental assessment in relation to mining at the Enterprise mine beyond 2012;
- (g) the expert evidence from Dr Stock that the Enterprise mine has had and is likely to continue to have a significant impact on the 18 mile swamp section of the Ramsar wetland;
- (h) being informed about the destruction of vegetation in the Ramsar area to the west of the Enterprise mine and that the likely cause was water inundation caused by the mine.

To be consistent with Australia's obligations under the Ramsar convention, we submit that the State government would abide by the Australian Ramsar management principles set out in [Schedule 6](#) of the EPBC Regulations 2000. Instead, we understand that the State government has contributed to the irresponsible and unjustified 21 year delay in implementing a management plan for the Moreton Bay Ramsar site.

As mentioned in section 3, the Federal Government has also failed to act consistently with our country's obligations under the Ramsar convention and the obligations in the EPBC Act to protect the declared Ramsar wetlands of North Stradbroke Island.

#### 4.1 Non-enforcement of Sibelco's bushfire management environmental undertaking

Early this year there was an extensive and serious bushfire on North Stradbroke Island. Sibelco still controls approximately half the island via its mining leases and access to many parts of the island, including to national park areas, are blocked by mining leases.

Sibelco was required to have a bushfire management plan. This was necessary not only to assist in the protection of areas of the island under mining lease, as fire obviously spreads quickly as it did in January. Sibelco's official documents show that it was fully aware of the threat of bushfire on Stradbroke and of the risks posed to human life, island vegetation and wildlife. Sibelco showed no regard for its responsibilities. It ignored its obligations and its written undertakings to government. It did not have a bushfire management plan. Year after year, for many years, it claimed in its annual Plans of Operations submitted to government that it was in the process of "developing" a bushfire management plan!

For further information, earlier this year we [published](#) a detailed analysis of the company's breaches of its bushfire management undertakings in our newsletter.

Of particular relevance to the term of reference however is the government's failure to enforce the undertakings. Was a query ever raised with the company? Did anyone in the government actually read the Plans of Operations, or is this a further sign that the government does not care whether Sibelco complies with its environmental undertakings?

#### 4.2 Non-enforcement of Sibelco's pest control environmental undertaking

Foxes have been out of control on the island for years and for years, as with its fire management undertaking, the company has breached its written undertakings to the government to control them on its mining leases. A fox control program operated by Redland City Council on land under their management has been of limited effectiveness due to foxes continuing to breed on the fifty percent of the island under mining lease.

Predation by foxes is causing severe impacts on the populations of many small island animals, including the young of threatened koalas and agile wallabies, the northern brown bandicoot, the rare and endangered water mouse and the island's four species of threatened acid frogs. Ground nesting birds, such as the threatened beach stone curlew, rainbow bee-eaters, plovers, emerald doves and other shore birds are also prey.

The beach nests of endangered loggerhead turtles are commonly raided at night by foxes and the eggs eaten. Foxes are the main land predators of sea turtles in Queensland. The island's lakes are also home to freshwater long-necked turtles, whose nests in the muddy banks have also become the target of foxes.

There are estimated to be between 1,000 to 2,000 foxes on the island but the Council's program on Council controlled land over the last 5 years has removed only 150 foxes. The only way for complete eradication to be achieved is a whole island approach which means Sibelco's annual written undertaking to control pests needs to be enforced by government.

For comparison, on Christmas Island (according to a Federal Environment Department 2014 Fact Sheet) the phosphate miner has recently committed \$1.35 million for feral cat eradication. It appears Sibelco has avoided spending significant amounts of money on fulfilling its obligations to control feral animals on the land it manages and the State Government's non-enforcement of the company's undertakings to it has allowed this to occur.

## **5. TERM OF REFERENCE (1)(e)**

(1)(e) whether it is appropriate for the Federal Minister for the Environment to delegate his approval powers to the Queensland State Government under the EPBC Act by way of approval bilateral agreements or strategic assessments

We submit that the North Stradbroke events summarised in this submission together demonstrate that there has been a pattern of non-enforcement of the law and of mining company undertakings on North Stradbroke Island, at both levels of government. This pattern of neglect for the environment, including in relation to half of the island supposedly protected by the Ramsar convention and the EPBC Act, is also reflected in the extraordinary 21 year delay in complying with our obligations to manage and protect the Ramsar areas on the island.

In our submission, the Federal Government needs to act to fulfill its international obligations and the requirements of the EPBC Act in relation to management and protection of the Ramsar areas. In the meantime, it would be inappropriate for the Federal Minister to delegate his powers to the Queensland government in relation to North Stradbroke Island. We submit that the Federal Government needs to take its responsibilities much more seriously before it considers delegation. We also refer again to our conclusion and request in section 3.6 of our submission.

We apologise for not including a summary. We have run out of time to prepare one. However, if it would assist, we are happy to prepare a summary and forward it later. Please let us know if that is required. We have however included an index to our submission.

Thank you for the opportunity to make this submission. Please let us know if you have any questions or wish us to clarify any aspect.

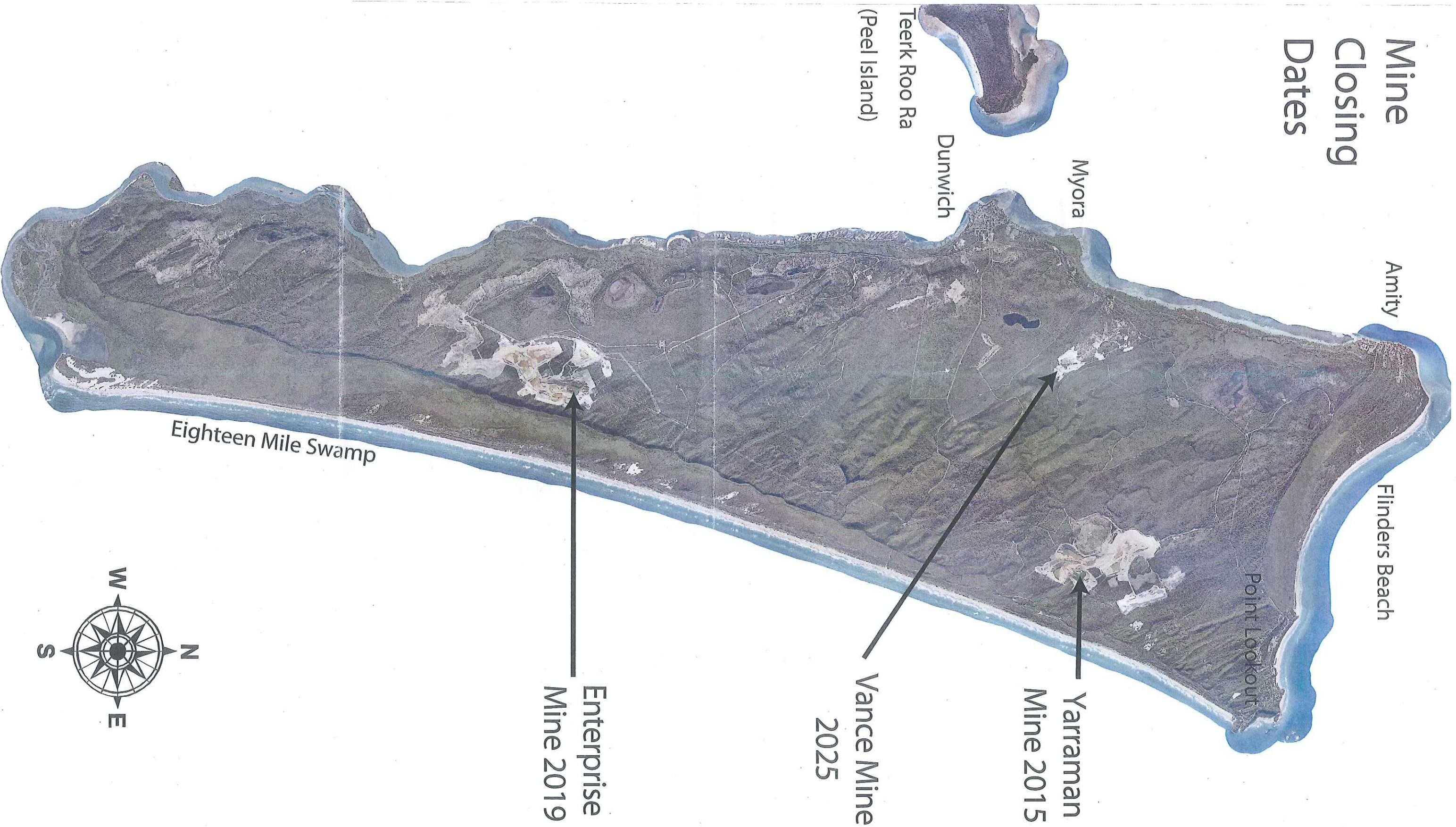
Yours sincerely

*Sue Ellen Carew*

Mrs Sue Ellen Carew  
President  
For and on behalf of the Management Committee



# Mine Closing Dates





Carew Lawyers  
PO Box 13328  
George Street  
Brisbane QLD 4003

Attn: Richard Carew

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## MEMORANDUM OF ADVICE

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**Re: The legislative renewal of sand mining leases on North Stradbroke Island and  
fundamental legislative principles.**

### Introduction

Instructing solicitors act for environmental groups and native title owners opposed to mining sand on North Stradbroke Island (NSI).

Sibelco Australia Limited (the only mining company currently operating on NSI) owns three mines- Enterprise, Yarraman and Vance.

Yarraman is scheduled to close within the next few years due to the depletion of the resource which had already been announced. Vance has relatively small silica deposits which will run out by the end of 2025. Enterprise has the primary lease (ML1117) but it expired in 2007 and was the subject of a pending renewal application under the *Mineral Resources Act 1989* (the MRA).

During negotiations with government in 2010 Sibelco offered to cease mining at both Vance and Yarraman by 2015 in return for the renewal of ML1117 to enable it to continue mining at Enterprise until 2027.



However, section 11(1) and schedule 1 of *The North Stradbroke Island Protection and Sustainability Act 2011* (the NSI Act) unconditionally renews the lease of the Enterprise mine (ML1117) until 2020.

This is a full 7 years shorter than the company hoped for but has the virtue of certainty and relieves Sibelco of the burden of having to satisfy the Minister for Mines that reinstating ML1117 would not be inconsistent with current or intended future uses of the land and is otherwise appropriate in the overall public interest under sec 286A of the MRA.

Conversely, the clients lost their MRA based rights and benefits which still apply unchanged to other mining lease applications and renewals throughout the State.

I am asked to consider and advise whether the Explanatory Notes (EN) to the NSI Bill and a Queensland Law Society (QLS) submission to the Scrutiny of Legislation Committee adequately addressed the overall impact of the NSI Bill from both pro and anti-mining perspectives.

As I explain more fully below both documents were seriously deficient and lacking in balance due to a common failure to identify a significant potential breach of fundamental legislative principles connected with the legislative renewal of ML1117, in particular.

### **Fundamental Legislative Principles**

Fundamental legislative principles are defined in the *Legislative Standards Act, 1998 (Q)* (LSA) as being those principles underlying parliamentary democracy based on the rule of law.

These principles expressly include requiring legislation to have sufficient regard to the factors listed in sec 4(3) of the LSA which include adherence to the rules of natural justice, fair compensation for compulsorily acquired property, and the prospective, rather than retrospective, alteration of existing rights.

Although one of the main purposes of the LSA is ensuring that Queensland legislation adheres to the fundamental legislative principles, they are largely aspirational in character and there is no absolute bar against inconsistent legislative provisions.

The Office of the Queensland Parliamentary Counsel advises Parliament and members on the application of fundamental legislative principles to proposed legislation.

A member introducing a Bill in the Legislative Assembly must circulate an explanatory note (EN) for the Bill which is supposed to contain a brief assessment of the Bill's consistency with fundamental legislative principles and to explain any discrepancy.

The Scrutiny of Legislation Committee reviews all introduced Bills and comments on their compliance with fundamental legislative principles.

### **The NSI Bill and EN**

The NSI Bill was part of an overall government strategy for NSI.

According to the EN the primary objective of the NSI Bill was to substantially end sand mining activities in the NSI region by 2019 and progress to a more economical and sustainable use of the land by 2025 in a way that appropriately balances the interests of the mining industry and the wider community, including protecting environmental and cultural values, and finally resolves longstanding issues concerning freehold land tenure for traditional owners.

This policy objective is achieved by renewing or extending mining leases up to but not beyond certain dates. The timeframe was explained in the EN as being a central "...part of a balanced resolution of the competing interests on NSI".

According to the EN existing administrative arrangements under the MRA could not be used to achieve the stated policy objectives with the same degree of clarity and certainty for stakeholders because the renewal or termination of mining leases "depends on exercises of discretion years into the future" and is not conducive to ecologically sustainable tourism development.

The EN recognised the tension between the compulsory acquisition of mining leases without fair compensation and the removal of the right to apply for a renewal of ML1117 under the MRA, on the one hand, and the underlying philosophy of the LSA, on the other.

It goes on to point out, however, that renewal of an expired mining interest is a contingent right subject to conditions and goes on to argue that the renewal of ML1117 which lapsed long before Sibelco even acquired it and without which the mine could not operate was a substantial compensating benefit to the company and justified the departure from the normal legislative standards.

The importance of the principle of equal treatment under the law is also acknowledged in the EN but only in the context of the mining company's loss of access to the MRA process which remained open to all other miners.

The only conflict with fundamental legislative principles noted in the QLS submission, by contrast, related to uncompensated early lease termination. No mention at all was made of ML1117 being renewed without any of the usual risks associated with having to comply with the MRA.

In recent times the Queensland Resources Council and Sibelco have made repeated public claims that the NSI Act has had an entirely negative impact on NSI mining interests and have cited the QLS report in support of their calls on the State government to restore the mine owner's pre - NSI Act rights which they contend entitled Sibelco to operate ML1117 beyond 2025.

The clients are concerned that the failure of the EN and the QLS submission to clearly explain the substantial benefit of the NSI Act to mining companies has allowed the sand mining industry to exaggerate 'sovereign risk' claims and may mislead the new LNP government into amending the NSI Act to allow even more mining.



## Analysis

The NSI Act more than compensated Sibelco for early lease termination by automatically renewing the lapsed ML1117 to 2020.

The advantage of the NSI Act to the mining company is obvious – it removed any risk of the pending renewal application under MRA being rejected or granted on unfavourable conditions. All Sibelco really lost was the prospect of Ministerial approval of mining for a longer period. The EN expressly recognised this but the QLS report did not.

On the other hand, the NSI Act dealt a demoralising blow to the pro-conservation cause by overriding pre-existing natural justice rights.

In broad terms, traditional rules of natural justice require administrative decision makers to give individuals and groups a reasonable chance of presenting a contrary case to safeguard rights, interests or legitimate expectations that are likely to be adversely affected.

Public interest groups like environmentalists, the anti – mining lobby and native title holders have been held by the courts to have sufficient standing to qualify as a “person aggrieved” under the *Judicial Review Act* 1991 for the purpose of challenging discretionary decisions to which the Act applies including those of the Executive made under a legislative scheme.

Section 11 of the NSI abrogated those procedural fairness requirements and judicial review rights with respect to the renewal of ML1117.

Generally speaking, legislation having *insufficient* regard for natural justice requirements will be inconsistent with fundamental legislative principles.

The Parliamentary Counsel and the Standing Committee have a duty to ensure the adequacy of an EN.

QLS members would, no doubt, have expected the same of any submission made on their behalf.

Neither document commented critically on natural justice issues arising from the NSI Bill. To that extent both are seriously deficient and unbalanced.

The shortcomings of the EN, of course, do not affect the validity of the legislation and read properly it does, at least, contradict the main thrust of the miners' dubious claim that they lost more than they gained with the passage of the NSI Act.

Publishing the agreed letter should suffice to remedy the imperfect analysis of the original QLS submission.

I advise accordingly.

With compliments,

A large rectangular red box redacting the signature of the sender.

**HON. TIM CARMODY S.C.**

Chambers

4 April 2012

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.

[Redacted]

[Redacted]

[Redacted]

**Sent:** Monday, 28 October 2013 6:24 PM  
**To:** arec@parliament.qld.gov.au  
**Cc:** robert.hansen@parliament.qld.gov.au  
**Subject:** Fwd: Submission by Friends of Stradbroke Island Inc (FOSI) re North Stradbroke Bill

[Redacted]

[Redacted]

Dear Mr Rickuss,

I neglected to attach 3 of the attachments referred to in my letter to my earlier email. I attach these now, together with the previous attachments.

I have had difficulty attaching the audio extract. I will send this when available. In the meantime, the full interview audio file is available at this link <http://blogs.abc.net.au/queensland/2012/01/campbell-newman-takes-your-calls.html>

On my computer, the relevant part of the interview concerning the Premier's policy on North Stradbroke sand mining commences at about the 17 minute mark.

Please let me know about the arrangements for making a short oral submission on Wednesday.

Regards,

Sue Ellen Carew  
President  
Friends of Stradbroke Island Inc

----- Forwarded message -----

[Redacted]

Date: Mon, Oct 28, 2013 at 5:01 PM  
Subject: Submission by Friends of Stradbroke Island Inc (FOSI) re North Stradbroke Bill  
To: [arec@parliament.qld.gov.au](mailto:arec@parliament.qld.gov.au)  
Cc: [robert.hansen@parliament.qld.gov.au](mailto:robert.hansen@parliament.qld.gov.au)

Dear Mr Rickuss,

Please find attached our submission. I attach separately the various attachments referred to in the submission and listed on the last page.

My full name is Sue Ellen Carew.

[Redacted]

[Redacted]

Regards,



Sue Ellen Carew  
President  
Friends of Stradbroke Island Inc

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For more information please visit <http://www.symanteccloud.com>

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## **1 INTRODUCTION**

### **1.1 BACKGROUND**

The planned Enterprise Mine is located on North Stradbroke Island in south-eastern Queensland. The Mine is being developed by Consolidated Rutile Limited (CRL), a member of the Australian-listed resource company, Iluka Resources Limited (Iluka). Iluka is one of the world's major producers of rutile and is a significant producer of ilmenite and zircon.

CRL was formed in 1963 to mine the mineral sand deposits of North Stradbroke Island and has been operating mines within its mining leases on the Island since 1966. The Company uses two separate floating dredges and mineral concentrating plants (ie. wet mining), as well as dry mining methods to extract rutile, ilmenite and zircon for sale to domestic and international consumers. Mining operations are currently located at Yarraman and Ibis, which are situated in the north-east and central parts of the Island respectively. Previously mined deposits that are now largely rehabilitated but still actively managed by CRL include the Gordon, Amity and Bayside areas. Figures 1-1 and 1-2 show the locations of CRL's current operations, previously dredge mined areas and mining leases on North Stradbroke Island. Known future mineral resources include Enterprise and the Vance deposit (Figure 1-1).

The concentrated mineral products from CRL's dredging and dry mining operations are trucked from the mine areas to the Company's barge loading facility at Dunwich. They are then transported by barge to CRL's mainland processing plant at Pinkenba, where the final stages of mineral separation into various product streams is completed. CRL's offices, stores and workshops on North Stradbroke Island are located at Dunwich and Kounpee (Figure 1-1).

CRL periodically relocates its dredge and mineral concentrators from one mineral sand deposit to another once mineral extraction is completed. This typically involves dismantling, transport and re-assembly of the dredge and concentrator at the new deposit. Recent examples of this relocation process include the relocation from Bayside to Ibis in 1996 and from Gordon to Yarraman in 1998/1999 (Figure 1-1).

The Ibis and Enterprise areas are located adjacent to each other, and are in fact a continuation of the same orebody (Figure 1-1). As a consequence, the Ibis dredge and concentrator will be able to mine directly into the Enterprise area (ie. dismantling, vehicular transport and re-assembly of the dredge and concentrator is not required). The planned Enterprise Mine will commence once the Ibis mining operation moves from Mining Lease (ML) 1121 into ML1117 in approximately June/July 2004. Prior to this changeover, the Ibis dredge and concentrator will be temporarily shut down to allow a floating thickener to be installed and associated concentrator modifications. The thickener is required to accommodate the slightly higher concentration of 'slimes' (ie. clay material of a particle size <75 micrometres [ $\mu\text{m}$ ]) that will be encountered during mining in the last year of Ibis and at Enterprise.

On the basis of known reserves and current mining rates, the Enterprise Mine is expected to have a total mine life in the order of 20 years. During 2002, CRL undertook a Definitive Feasibility Study (DFS) into the commencement of the Enterprise Mine once extraction of the Ibis resource has been completed (CRL, 2003). The DFS evaluated the Company's 10-Year Mine Plan, which covers the final year of Ibis (June 2003 to June 2004) and operations in the southern part of the Enterprise orebody in the period from approximately July 2004 to the end of 2012 (ie. the first half of the Enterprise Mine life or Stage 1). In June 2003, CRL's Board approved capital expenditure for the 10-Year Mine Plan.

Detailed evaluation of the second half of the Enterprise Mine (ie. 2013 onwards or Stage 2) is subject to further mine optimisation, feasibility and environmental assessment. The current conceptual life-of-mine plan involves the Yarraman dredge and concentrator being dismantled and relocated to the northern part of the Enterprise orebody once mining at Yarraman ceases (expected to be in 2012/2013). The two dredges would then operate concurrently at Enterprise for a period of around 10 years.

The Enterprise Stage 1 and conceptual life-of-mine plan is summarised in Table 1-1 and shown on Figure 1-3.

**Table 1-1  
Conceptual Life-of-Mine Development of the Enterprise Mine**

Phase	Description	Years
Stage 1*	Mining of the southern section of the Enterprise deposit using the Ibis dredge and concentrator and dry mining of areas adjacent to the dredge path.	2004 - 2012
Relocation Activities**	Relocation of a second dredge and concentrator from Yarraman to the northern section of the Enterprise deposit.	Approximately 2012/2013
Stage 2**	Mining of the remainder of the deposit with two dredges and concentrators operating concurrently in the southern and northern sections of the deposit, plus dry mining in areas adjacent to the dredge paths.	Approximately 2013 - 2023

\* As defined by the DFS.

\*\* Subject to further mine optimisation, feasibility and environmental assessment.

## 1.2 PURPOSE OF THIS REPORT

The Enterprise mineral sand deposit is located within five of CRL's mining leases (ie. ML1105, ML1113, ML1117, ML1119 and ML1120) and has been known since the 1950s. CRL's non-standard Environmental Authority (No. MIM800088202) and Environmental Management Overview Strategy (EMOS) (CRL, 2002) authorise mining of the Enterprise deposit, subject to the Company meeting the environmental management obligations documented in the Environmental Authority conditions and the EMOS environmental undertakings. A copy of CRL's Environmental Authority is provided as Appendix A.

A requirement of the Environmental Authority and EMOS is that baseline environmental studies and an assessment of potential adverse and beneficial impacts be carried out prior to the commencement of the mining activities. Environmental Authority Condition A4.3 has specific requirements with regard to the Environmental Studies Report (ESR). These requirements and where they are addressed in the ESR are outlined below:

<p>An Environmental Studies Report (ESR) about the baseline environmental studies must be submitted to the administering authority at least one month prior to the commencement of mining activities.</p> <p>The report must:</p> <p>a) provide the results of the baseline environmental studies conducted in accordance with the Terms of Reference;</p> <p>b) identify the environmental values and their location within the mining lease(s) and zone of impact;</p>	Section 3
<p>c) provide an assessment of the potential adverse and beneficial impacts of the mining activities on the environmental values;</p> <p>d) by using the principles in the risk management system state control strategies to protect the environmental values</p> <p>e) state trigger levels for indicators of possible impacts on the environmental values – the trigger levels must be set to alert the holder of potential environmental harm prior to any environmental harm occurring; and</p>	Section 4

<p>f) <i>include details of the level and nature of stakeholder consultation undertaken during the development of the baseline environmental studies and the ESR including:</i></p> <p>(i) <i>a summary of the concerns and interests raised by stakeholders;</i></p> <p>(ii) <i>a summary of issues where agreement with stakeholders could not be met; and</i></p> <p>(iii) <i>details of on-going consultation arrangements to be adopted during the operational phase and any identified issues which require further stakeholder involvement.</i></p>	<p>Section 1.5</p>
--	--------------------

This report (referred to herein as the Enterprise ESR or the ESR) has been prepared to satisfy the requirements of Environmental Authority Condition A4.3 for mining activities scheduled to occur in the Enterprise Mine site during Stage 1 of the mine life.

### 1.3 OVERVIEW OF THE PLANNED STAGE 1 ENTERPRISE MINING ACTIVITIES

The mining method used at Enterprise will be a continuation of the methods used by CRL at the existing Ibis and Yarraman Mines. Large scale wet mining techniques have been used by the Company on the Island since 1978 when the Bayside Mine commenced at a nominal production rate of 1,800 tonnes per hour (tph). The current dredges have been working at average rates between 2,700 and 3,200 tph for the past 10 years. The mining rate varies according to ground conditions, with peaks of 3,500 to 3,800 tph. It is planned to achieve an average mining rate of 3,100 tph during Stage 1 of Enterprise. Figures 1-4 and 1-5 present simplified schematics that illustrate CRL's wet mining operations.

The existing Ibis suction-cutter dredge will be used at Enterprise. It, and the mineral concentrator plant, will float in a pond approximately 10 to 15 metres (m) deep. Sand will be pumped from the dredge via a delivery line to the concentrator for separation of valuable heavy minerals from the remaining sand (tailings).

Mineral concentrates generated by the floating plant will be pumped ashore to dewatering cyclones located within a nearby mineral stockpile area. Concentrates will be trucked from the Mine to the Dunwich barge loading facility before being barged to Pinkenba for further processing. CRL will use existing transport routes and hours of operation for these haulage activities (ie. no change from existing Ibis concentrate transport activities).

The elevation of the Enterprise dredge within the deposit will be adjusted by controlling the water level in the dredge pond. The water level will be maintained as necessary by controlled supply of water from a combination of licensed surface water pumping stations (ie. Herring Lagoon and Kounpee Trench) and groundwater sources (ie. bores and seepage interception/water management areas). The make-up water demand is expected to be greatest in the first year of the mine life (ie. approximately 20 million litres per day [ML/d]) and gradually reduce to around 12 ML/d from 2005 onwards as the dredge descends into the orebody.

As with the current mines, Enterprise will operate 24 hours per day, seven days per week, with ore processing estimated to occur 90% of this available time. The dredging process will be interrupted on occasion to allow maintenance and services work to be carried out.

3 November 2010

Mr R Carew  
Carew Lawyers  
Level 32  
239 George Street  
BRISBANE Q 4000

Dear Mr Carew,

**Joint Opinion  
Unimin Australia Limited**

**Opinion sought**

1. You have asked us to advise as to whether there is a basis to conclude that any indictable offence has been committed by Unimin Australia Limited (**Unimin**) under the *Criminal Code 1889 (Q)* (**the Code**) in respect of certain sand mining operations on North Stradbroke Island.

**The conduct**

2. Unimin conducts mining operations on North Stradbroke Island for, *inter alia*, silica sand, under certain mining leases<sup>1</sup> issued under the *Mineral Resources Act 1989 (Q)* (**MRA**). Only the mining lease ML1108 is currently being mined. The lease provides authority to mine 'the mineral Silica Sand'.<sup>2</sup> In the course of the mining, the sand undergoes gravity separation, whereby different components are isolated and stockpiled. Some of these products are the subject of the lease and are lawfully sold, the other components are settled and then used as backfill for rehabilitation in the lease areas. The principal purpose of the mining is to extract silica for use in glass manufacture. This silica, called 'Glass Grade silica sand' is a mineral within the meaning of s 6(1) of the MRA. It may thus be lawfully sold without any permit for its extraction or approvals under the *Integrated Planning Act 1997 (IPA)*.
3. There is also extracted, in the treatment process, a by-product of lower purity silica sand. Unimin has referred to this as 'B Grade silica sand'; although it has been sold by Unimin under various descriptions including "building sand", "washed white silica sand" and "B grade glass sand". Unimin has, it seems, sold

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<sup>1</sup> Mining lease numbers 1108, 1124, 1132 and 7064.

<sup>2</sup> Para 24, affidavit of Mr Watkins, Exhibit GW-003.

this sand for use in the construction and landscape industries since it first purchased the sand mining operations from ACI on 1 March 2001.<sup>3</sup>

4. According to Supreme Court affidavit material, search warrants were executed upon Unimin in December 2008. In February 2009, the EPA issued a 'show cause' notice and in a letter dated 2 April 2009 the EPA advised Unimin that the supply of B Grade sand to the construction industry was unlawful.<sup>4</sup>
5. Unimin then brought an application for declarations that would have affected the legal character of its activities – see *Unimin v State of Queensland* [2009] QSC 384 (*the Unimin case*). The relevant facts were the subject of a 'Joint statement of agreed facts and issues' tendered by both parties.
6. In December 2009, Applegarth J found that the B Grade silica sand being sold for use in the construction industry is *not* a mineral under the MRA.<sup>5</sup> (A mining lease can only be issued in respect of minerals.)<sup>6</sup> His Honour also held that neither of the MRA, the mining leases nor any other authority existed to pass property to Unimin in respect of anything other than a mineral.<sup>7</sup> Accordingly, Unimin had no lawful authority to sell the B Grade silica. To do so would require authorisation under the IPA. Not only should it not have been sold, but the mining lease in fact required it to have been settled and used for rehabilitation purposes.
7. The Court of Appeal confirmed the correctness of Applegarth J's decision.<sup>8</sup>
8. Unimin's apparent knowledge of the unlawfulness of its activities was not the subject of any evidence in the proceedings before Applegarth J or in the subsequent appeal.

### **Current litigation**

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<sup>3</sup> Para 4, affidavit of Mr Watkins.

<sup>4</sup> Paras 38-40, affidavit of Mr Watkins.

<sup>5</sup> At [32], [92].

<sup>6</sup> Section 234 MRA.

<sup>7</sup> At [124].

<sup>8</sup> *Unimin Australia Limited v State of Queensland* [2010] QCA 169

9. Unimin is currently being prosecuted by the Department of Environment and Resource Management (DERM) for summary offences against s 4.3.1 of the EPA (failing to carry out development without a development permit), s 427 of the EPA (carrying out a Ch. 4 activity without being a registered operator) and s.53(1)(c) of the Forestry Act (for getting a quarry material on a mining lease without authority). We note that under the *Penalties and Sentences Act* 1992, the maximum applicable fines in each case are increased by a factor of five in the case of corporations. Our understanding as to the state of these proceedings is based upon information supplied by you.

**Report from The Consultancy Bureau (the TCB Report) February 2009**

10. A report was commissioned by the Environmental Protection Agency from a private firm called The Consultancy Bureau (TCB). This has only very recently come into your possession. Attached to it are a number of statements which pertain to the issue of Unimin's actual appreciation of the lawfulness or otherwise of their conduct in relation to the B Grade sand.
11. Following are some excerpts from some of the relevant statements:

Statement of  (Principal Environmental Officer, Redlands, Environmental Protection Agency)

- *I was formerly the Principal Environmental Officer in the Redland Team. I was given responsibility for a number of projects including Unimin's North Stradbroke Island sites.*
- *I was asked whether I was aware if Unimin was selling building sand. On ... 14 July, 2008, I received a verbal request from my regional manager ... enquiring whether Unimin had been engaged in the sale of construction sand ... and whether it had supplied, or was supplying, construction sand to landscaping suppliers. I then telephoned  the Environmental Manager of Unimin ... he was rather reluctant to respond to my specific enquiries but said words to the effect that Unimin had been sand mining for approximately 35 years and there may have been some construction sand activity previously. He told me that Unimin had held on-site meetings with representatives from Redland City Council regarding a possible material change of use application, but had lodged no such application.  also told me that Unimin does not have approval to extract construction sand but may apply to the Redland City Council by submitting a material change of use application. (Para 5 & 6 p2, para 1 p3).*
- *Later that same day (17 November 2008), after the meeting had ended, I was reviewing the EMOS and a map attached to it when I noticed that there was a stockpile of sand marked as building sand. I brought this to the notice of  and she raised it with Unimin*

representatives during the meeting the following day. They commented that it was a mistake or an error and needed to be quickly fixed. (Para 3 p4).

Statement of [redacted] (Manager, Redlands, Environmental Protection Agency as at date of statement)

- I do remember specifically asking them for a copy of their EMOS on the first day because we couldn't locate it on the files. They provided it... I noticed a site map at the back of the document and immediately showed it to [redacted]. The site map showed an area marked as building sand. Earlier that afternoon when leaving the site in [redacted] vehicle, I had asked [redacted] about the various stockpiles to the left of the driveway and what the stockpile product was used for, suggesting construction sand... [redacted] told me that Unimin are not permitted to sell building sand and they had been advised by one of my predecessors that they were not approved to do this. [redacted] stated that my predecessor told them to stop selling construction sand. (Paras 2 & 3 p4).
- After viewing the schematic diagram, I brought this to [redacted] attention the following day when we returned to the Island. He seemed surprised and immediately spoke to someone else saying that they needed to amend that straight away.... (Para 4 p4).

Statement of [redacted] (from May 2000 to 1 February 2008 - Chief Scientific Adviser (Mining) with the Environment Protection Agency)

- I became Project Manager for Unimin's sandmining activities on North Stradbroke Island in late 2005. (Para 3 p1).
- Later in the same paragraph [redacted] makes reference to the Environmental Studies Report (ESR) (there is no mention in the report submitted in late 2005 of selling building sand).
- ...I produced notes from my journal referring to a site inspection in May 2006... Unimin personnel also mentioned the possibility of future extraction of construction sand and as my notes show they were advised that this would require a separate development application under the Integrated Planning Act 1997. I also produced a procedural guide titled 'Operation of Policy - Licensing Mine Sites for Quarrying and Screening'. This document was produced by the EPA to assist EPA personnel and operators understand their rights and obligations and clearly states that construction materials are not minerals and require separate approval under the Integrated Planning Act 1997. I recall that an email was sent by me to Unimin personnel advising them that the extraction of construction sand from mining leases would require an additional permit ... (Paras 2 & 3 p3). (Note this email was sent in 2007 - see below.)

Email from [redacted] - 30 July 2007

'The definition of a mineral under Section 6A(3)(c) of the Mineral Resources Act 1989 states that each of the following is not a mineral: 'soil, sand, gravel or rock if it is to be used, or to be supplied for use, as sand, gravel or rock, whether intact or in broken form.' Your



*current Environmental Authority relates to mining activities only, namely the extraction of minerals as defined under Section 6A of the MRA.....<sup>9</sup>*

12. These statements could afford evidence that Unimin, through its Environmental Manager, was aware that it was not authorised to sell or otherwise deal with B grade sand from as early as May 2006<sup>9</sup>. Ultimate proof of issue might require reference to other evidence as to the manner in which the Company operated and as to the status of [redacted] within the Company. On the materials before us, however, the inference is open that through his actions corporate knowledge might be imputed.

***Did Unimin steal or misappropriate the B Grade silica sand from the Crown?***

13. Stealing occurs where a person 'fraudulently takes' anything capable of being stolen, or 'fraudulently converts to the person's own use' that property: s 391(1). Section 391(2) sets out a number of circumstances where by someone is deemed to have fraudulently taken or converted property, relevantly, where there is: (a) an intent to permanently deprive the owner of the thing of it.
14. Misappropriation or fraud under s 408C of the Code particularly ss 408C(1)(a)(i), (c), (d), and (e) all bear examination in this context in respect of this conduct of removing and selling the sand in question.

**408C Fraud**

A person who dishonestly—

- (a) applies to his or her own use or to the use of any person—
  - (i) property belonging to another; or
  - (ii) property belonging to the person, or which is in the person's possession, either solely or jointly with another person, subject to a trust, direction or condition or on account of any other person; or
- (b) obtains property from any person; or
- (c) induces any person to deliver property to any person; or
- (d) gains a benefit or advantage, pecuniary or otherwise, for any person; or
- (e) causes a detriment, pecuniary or otherwise, to any person; or
- (f) induces any person to do any act which the person is lawfully entitled to abstain from doing; or
- (g) induces any person to abstain from doing any act which that person is lawfully entitled to do; or
- (h) makes off, knowing that payment on the spot is required or expected for any

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<sup>9</sup> Refer statement of Trezise in TCB Report

property lawfully supplied or returned or for any service lawfully provided, without having paid and with intent to avoid payment;

commits the crime of fraud.

15. To prove an offence against either s 391 or 408C, the evidence must always be capable of negating the defence contained in s 22 of the Code:

**22 Ignorance of the law—bona fide claim of right**

(1) Ignorance of the law does not afford any excuse for an act or omission which would otherwise constitute an offence, unless knowledge of the law by the offender is expressly declared to be an element of the offence.

(2) But a person is not criminally responsible, as for an offence relating to property, for an act done or omitted to be done by the person with respect to any property in the exercise of an honest claim of right and without intention to defraud.

16. The mining lease places Unimin in possession of the B Grade silica sand. Unimin is permitted to take the sand out of the ground in the course of its mining of silica, but the lease requires that the B Grade silica sand remain within the confines of the lease areas and used for rehabilitation and regeneration of the area. On the basis of the “agreed facts” in the Unimin case<sup>10</sup>, there seems little issue, for the purposes of either ss 398 or 408C, that what might be called the “physical elements” of the offence can be established. That is, Unimin took the sand and used it for its own purpose, always intending that it should not be returned to the lease area. The functional issues are whether the fault element - that is, dishonesty - can be established, and whether any claim of right can be refuted.
17. We note that aspects of the evidence militate against any conclusion as to dishonesty, and might support a defence under s 22. These include the facts that some royalties might have been paid on the relevant material, and that Unimin claims its actions enjoyed “ministerial approval”.
18. The test for dishonesty remains as was stated in *R v Maher* [1987] 1 Qd R 171 at 187, where the Court of Criminal Appeal, writing as one and applying the test from *R v Ghosh* [1982] QB 1053 held that the approach to be taken in respect of charging the jury with a question of dishonesty was:

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<sup>10</sup> See paragraph 6, above.

'First, to determine whether the conduct of the accused was dishonest according to the objective standards of the community and, only if that were answered affirmatively would they approach the second stage and determine whether the accused subjectively knew that his conduct was dishonest according to the standards of the community'

19. *Maher* remains the law in Queensland and underpins the present bench book direction which reads:

'To prove that the defendant acted dishonestly the prosecution must prove that what the defendant did was dishonest by the standards of ordinary honest people and that the defendant realised that what he or she did was dishonest by those standards'

20. Whilst the law applicable to this concept might in some contexts be unsettled, for current purposes this controversy is probably of little consequence.<sup>11</sup> The short point to be made is that if evidence of the kind contained in the TCB Report from EPA officers, [redacted] as to their dealings with [redacted] and other representatives of Unimin was adduced, it would, *prima facie*, establish the requisite element and negate the applicable defence/s, at least in relation to any relevant conduct which occurred subsequent to these communications.

### **Conclusion**

21. From this analysis of the materials with which we have been briefed, and in particular the material referred to in paragraph 11 (above), it would follow, in our opinion, that there is a *prima facie* case of stealing (s 391) and of misappropriation/fraud (s 408C) having been committed by Unimin.

[redacted]

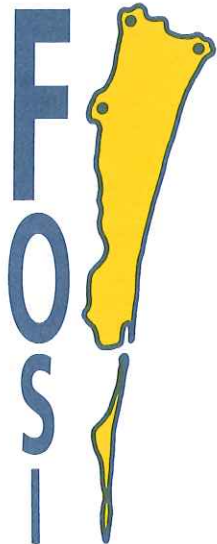
PJ Callaghan SC

[redacted]

[redacted] A Boe

This advice has drawn upon the research of P Morreau of Counsel.

<sup>11</sup> *Peters v The Queen* (1998) 192 CLR 493; *Glenmont Investments Pty Ltd v O'Loughlin (No 2)* (2000) 79 SASR 185



**FRIENDS OF STRADBROKE ISLAND**

P.O. Box 167, Point Lookout,  
North Stradbroke Island, Qld 4183

13 April, 2012

The Hon Campbell Newman  
Premier of Queensland  
PO Box 15185  
City East 4002

thepremier@premiers.qld.gov.au

Dear Premier

**North Stradbroke Island sand mining issues**

We refer to our (undated) letter sent to you on March 30<sup>th</sup> requesting a meeting. A copy is attached for convenience.

We now have legal advice from a highly respected Senior Counsel, supporting our arguments concerning the sand mining provisions of the 2011 *North Stradbroke Island Protection and Sustainability Act*. It appears that parliament and the public were misinformed and misled about some aspects of the Act – including by sources we all expect to be fair, reasonable and balanced. We attach an opinion dated 4 April, 2012 from the Hon Tim Carmody SC.

In Mr Carmody SC's opinion:-

- both the explanatory notes and the Queensland Law Society submission on the Bill were **“seriously deficient and unbalanced”**;
- Contrary to the claims by Sibelco and others, the NSI Act resulted in it gaining much more than it lost.

Sibelco, the Queensland Resources Council and others have continued to mislead the public concerning the alleged negative impact of the legislation on the “rights” of Sibelco and its employees. Mr Carmody's analysis of the legislation demonstrates that these claims do not stand up to scrutiny. In Mr Carmody's words ...“ *The NSI Act more than compensated Sibelco for early lease termination by automatically renewing the lapsed ML 1117*”.

The former Government's claim to be “ending mining” was a sham. In reality, it extended mining. It used special legislation to renew key already expired leases to facilitate further destruction of a beautiful island on Brisbane's doorstep – until 2020 at “Enterprise” mine and 2025 at “Vance” mine.

The renewal of key expired leases using special legislation also prevented our challenging the renewals. We were deprived of our legal rights. Had the decisions to renew these key expired leases, including ML 1117, been made under the Mineral Resources Act (MRA), we had a right to challenge the renewals on judicial review. Mr Carmody SC confirms that the Act deprived us of our legal right to do this – and that this interference with our legal rights was completely ignored by the explanatory notes and the QLS submission.

As Mr Carmody confirms, the explanatory notes to the April 2011 legislation concede that Enterprise mine could not have continued to operate without the renewal of ML 1117. Its renewal was critical to environmental destruction continuing on a grand scale, with dredge mining taking place up to 100 metres below what were ancient sand dunes formed up to 300,000 years ago. As the Federal government accepted in 1976, sand mining destroys complex ecosystems and interferes with sand



island hydrology. Mining continues to put at risk the Ramsar wetlands and creates further threats for many already vulnerable and endangered species. Our scientific advice is that we may have reached a tipping point for the mined areas of the island to recover to a reasonable extent over time. Any more mining may destroy forever the prospects of successful revegetation. The mined areas will never recover to the pre-mined state. In the words of Malcolm Fraser in 1976 sand mining causes *"major, permanent and irreversible environmental harm"*.

Our legal advice from barristers in 2011 indicated that renewal under the MRA was unlikely to have stood up to judicial scrutiny. In essence, the advice was that no Minister could have been genuinely satisfied of all of the prerequisites for renewal under s.286A of the MRA. For example, before there is legal power to renew under the MRA, the minister had to be satisfied that more mining was appropriate having regard to other current or future land uses. Apart from other arguments against mining, subsequent to ML 1117 at 'Enterprise' being last renewed in 1986:-

- part of the lease area had become listed as 'national estate';
- part of it had been included in the Moreton Bay Ramsar site;
- all of the lease area is within the proposed national park; and
- all of the lease area is now recognised as native title land. Spokespeople have stated that the majority of native title owners are opposed to the continued destruction of their land.

You don't need to be a lawyer to realise that renewal of expired ML 1117 in particular was unlikely to have impressed a Supreme Court Judge given the clear conflict between the environmental destruction caused by sand mining and the current and future uses of the same area of land in accordance with the changes that have occurred since 1986.

In addition, it appears that Sibelco is a rogue mining company. It is before the courts on unresolved criminal charges relating to the unlawful removal of non-mineral sand from Stradbroke Island. In 2010 the Court of Appeal found that it had taken the sand unlawfully. Its criminal responsibility is still to be determined. It should be mentioned that evidence of dishonesty in the taking of the sand was not put before the Supreme Court or Court of Appeal. Based on evidence (from a number of public servants) of dishonesty by the mining company, we have senior counsel opinion that there is a prima facie case of stealing and fraud against the company. In December 2010 it changed its name from Unimin Australia Limited, the name in the court charges, to Sibelco, after its Belgian parent.

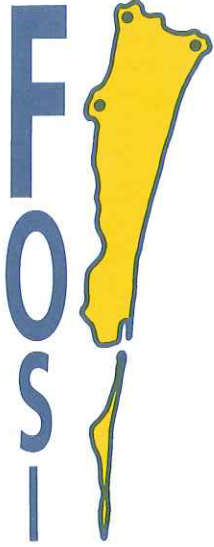
As you know, according to media reports, Sibelco was also controversially involved in the recent State election campaign and is under investigation for breach of the electoral laws over its campaign in Ashgrove in particular.

We request a meeting with you and your senior advisers to discuss the issues raised in Mr Carmody's opinion and to provide more information, including the other legal opinions we have mentioned. We also wish to discuss our case for the government to restore our legal rights to challenge in court the renewal of ML 1117, in particular. Mr Carmody points out that if the renewal occurred anywhere in Queensland, we would have had the legal right to challenge the decision.

We look forward to hearing from you.

Yours Sincerely,

  
Angela McLeod  
Secretary



**FRIENDS OF STRADBROKE ISLAND**

P.O. Box 167, Point Lookout,  
North Stradbroke Island, Qld 4183

16 July, 2012

The Hon Campbell Newman  
Premier of Queensland  
PO Box 15185  
City East 4002

[thepremier@premiers.qld.gov.au](mailto:thepremier@premiers.qld.gov.au)

Dear Premier,

**Law Society correction dispels Sibelco's Stradbroke myths**

We refer to our letter to you of 13 April. We attach a copy for your convenience.

In the light of the opinion of the Hon. Tim Carmody, SC dated 4 April 2012, the Queensland Law Society recently corrected its 30 March, 2011 submission on the North Stradbroke legislation. We attach a copy of its correction dated 4 July, 2012.

The Law Society's correction has pulled the rug from under the incorrect claims of Sibelco and the Queensland Resources Council about the 2011 Legislation. Prior to the correction, the Law Society's one-sided submission gave credibility to these claims.

The Law Society now acknowledges that the renewal of already expired leases was a benefit to Sibelco. It further acknowledges that the bypassing of the Mineral Resources Act expired lease provisions extinguished our pre-existing rights under that Act and under the Judicial Review Act 1991, in breach of fundamental legislative principles. These principles reflect the democratic rights and liberties of us all and are intended to deter parliament from interference with these rights, unless interference is justified. Unfortunately, parliament was misled by the Law Society and others. In the words of the Hon. Tim Carmody, SC, the Law Society's submission was "seriously deficient and unbalanced".

As our letter of 13 April pointed out, our pre-existing rights were far from 'academic'. We had legal advice that the former government would have had difficulty upholding, on judicial review, renewal of the expired leases under the Mineral Resources Act because the Minister could not have been genuinely satisfied of all of the factors listed in s.286A – a pre-condition to renewal – in the special circumstances on North Stradbroke Island.

A recent publication from Sibelco states.... "*We are pleased to have already had positive preliminary discussions with the Newman Government and these discussions are ongoing.*" (see copy attached).

We trust that we have made out a case to meet with you, regarding the restoration of our pre-existing rights which were interfered with by the North Stradbroke legislation. We are aware of your pre-election statements regarding the restoration of rights interfered with by the former government. We accept that you may not have been aware then of the impact on our rights. However, as is revealed in the opinion of Mr Carmody SC, there was no greater interference, than the extinguishment of our rights – and the rights of others opposed to renewal of the expired mining leases, particularly ML 1117.

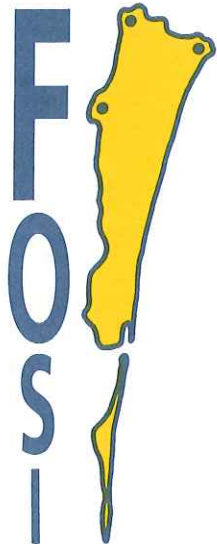
We look forward to hearing from you regarding a meeting to discuss our position.

Yours Sincerely,



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In addition, it appears that Sibelco is a rogue mining company. It is before the courts on unresolved criminal charges relating to the unlawful removal of non-mineral sand from Stradbroke Island. In 2010 the Court of Appeal found that it had taken the sand unlawfully. Its criminal responsibility is still to be determined. It should be mentioned that evidence of dishonesty in the taking of the sand was not put before the Supreme Court or Court of Appeal. Based on evidence (from a number of public servants) of dishonesty by the mining company, we have senior counsel opinion that there is a prima facie case of stealing and fraud against the company. In December 2010 it changed its name from Unimin Australia Limited, the name in the court charges, to Sibelco, after its Belgian parent.

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We look forward to hearing from you.

Yours Sincerely,

  
Angela McLeod  
Secretary



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 

  
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**



Law Society House, 179 Ann Street, Brisbane Qld 4000, Australia  
GPO Box 1785, Brisbane Qld 4001  
Tel +61 7 3842 5904 Fax +61 7 3229 4737  
president@qls.com.au  
ABN 33 423 389 441

Office of the President

Your Ref: Scrutiny of Legislation Committee

Quote in reply: Planning and Environment Law Committee

30 March 2011



B5.11

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

[scrutiny@parliament.qld.gov.au](mailto: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

[Redacted signature box]

Bruce Doyle  
President





# Message from the Chief Executive Officer



**Campbell Jones**  
Chief Executive Officer  
Sibelco Australia

Dear Sand Times readers,

Welcome to this year's winter edition of the Sand Times – our North Stradbroke Island (NSI) community newsletter.

It is hard to believe half of 2012 has gone by already!

Since the previous edition of Sand Times, Queenslanders have been to the polls and spoken decisively against the policies of Anna Bligh's Government. All Islanders understood what damage former Premier Bligh's plan for NSI would have had on the community if sand mining was shut-down early. Sibelco Australia recognises all community members who were active in the grassroots campaign against the Bligh Government's NSI policy. Your efforts cannot be understated in securing the economic future of the Island for years to come.

We congratulate Premier Campbell Newman on his willingness to pursue a fresh new policy that both promotes the unique environment, community and economic characteristics of NSI. We are pleased to have already had positive preliminary discussions with the Newman Government and these discussions are ongoing.

In this edition of the Sand Times we meet the six NSI residents who have been appointed as Advisory Board members and will administer the Straddie Sand Mining Community Fund. Sibelco Australia received a large number of impressive nominations from passionate Straddie residents who wanted to be part of the Fund and help set the future direction for the Island. In due course we look forward to introducing them to you in a community forum.

It's been a busy first half of the year for NSI with numerous community events held on the Island. Sibelco Australia is proud to have sponsored many of these events including the fabulous Easter Carnival which attracted record crowds with a spectacular fireworks display over the Bay.

The company was excited to be part of the opening of two new playgrounds at the Dunwich State School and the Stradbroke Early Learning Centre. It was great to see Sibelco Australia's contribution well received in the local community.

In this edition, we have also included an interesting article on how Sibelco Australia pioneered progressive land form criteria achieving world class, award-winning rehabilitation practices which both Sibelco Australia and the community can be justifiably proud of.

We also report on our very own Sibelco Australia employee and seven-time Australian national downhill mountain biking champion, Tracey Hannah. While completing her traineeship in Surface Extraction Operations with Sibelco Australia, Tracey spends her weekdays maintaining the Yarraman mine pipelines and operating heavy machinery. After winning the first stage of the 2012 World Cup Series earlier this year, Tracey is currently competing in Europe, hoping to take out the overall Series title. Congratulations Tracey on your outstanding achievements and good luck for the rest of the Series.

Thank you for taking the time to read this edition and we look forward to bringing you more local news and community insights as we continue to work towards a sustainable future for the Island.

From all of us at Sibelco Australia, we wish you and your family a relaxing winter break.







PHOTO: JAN ALDENHOVEN

*Amendment Bill 2013.* The amendment bill directly and negatively impacts the native title rights and interests of the Quandamooka people.

It further suppresses our rights to access land, hunt, conduct ceremony and utilise our lands from 2019 to 2035. The stunning effect of this is that some of our Elders will never get to exercise their rights on this land in their lifetime. This is not acceptable.

QYAC was not once consulted about and did not consent under its ILUA for this legislation that impacts its native title rights.

An October 2013 submission by QYAC Elders to the Parliamentary Committee hearing into the Amendment Bill clearly outlined this. The Parliamentary Committee agreed and formally found that no consultation was undertaken with the Quandamooka people. A leaked briefing document from government indicated that it knew that the legislation may be a breach of our ILUA, but that it would be timely and costly to prove.

QYAC believes that the Amendment Bill is not only a clear breach of our ILUA, but is in breach of s109 of the Australian Constitution. This section invalidates state legislation when it conflicts with Commonwealth legislation.

QYAC is asking the High Court to strike down the Queensland government's Amendment Bill as invalid for being inconsistent with the *Native Title Act*.

Our court action is clearly aimed at defending the native title rights and interests of the Quandamooka people, and is not an action of a few individuals, as MP Mark Robinson incorrectly stated in parliament. It was disappointing to see our state representative make such comments in Parliament on the day we lodged our proceedings.

We are nobody's puppets – we are our own First Nation.

QYAC proudly boasts the largest membership of any PBC in Australia. There is a Director position provided for each of the 12 ancestral families recognised in our Native Title Determination. All families have a say in our decisions if they choose.

Taking legal action to defend our rights was flagged and unanimously supported by QYAC members at its Annual General Meeting in November 2013. Importantly, QYAC received unanimous endorsement by the QYAC Elders in Council, our peak body for native title decisions for the Quandamooka people, comprised of the male and female Elder for each family group. Our decision followed Quandamooka law and custom.

No matter what the LNP believes is their mandate, no mandate allows them to breach the Australian Constitution. A mandate does not give you the right to break the law.

*Cameron Costello is chief executive officer of QYAC.*

Evelyn Parkin and Gwen Graham holding the court documentation outside the Commonwealth Law Court in Brisbane

## Defending native title rights

*"I have not come here today to give anything to the Quandamooka people. These orders give them nothing. Rather, I come on behalf of all Australian people to recognise their existing rights and interests, which rights and interests have their roots in times before 1788 ... Those surviving rights and interests I now acknowledge. In so doing I bind all people for all time. This includes the Commonwealth of Australia, the State of Queensland, the Redlands City Council and the Brisbane City Council."*  
Justice Dowsett of the Federal Court, July 4, 2011

The words of Justice Dowsett in delivering his 2011 judgment recognising the Quandamooka people are compelling, powerful in nature, and said with the full authority of the *Commonwealth Native Title Act 1993*.

The Quandamooka Yoolooburrabee Aboriginal Corporation (QYAC) is a creature of the *Native Title Act*; a Prescribed Body Corporate (PBC) that manages the native title rights of the Quandamooka people.

Its creation was endorsed by the Quandamooka people as a whole and its primary function is to be the agent for and defend the Quandamooka people's native title rights and interests. It is now doing so with the full force of the law.

On Friday June 6, 2014, the Quandamooka Elders held a dignified ceremony outside the High Court before launching an historic legal action against the Newman Queensland government.

In short, the Quandamooka people negotiated for 16 years under the Commonwealth *Native Title Act*, leading to a Consent Determination that recognised not only the Quandamooka people's rights and interests but also a number of other interests including Indigenous Land Use Agreements (ILUA's) with the Queensland government and Redland City Council.

When the Newman government came to power in 2012, the Quandamooka people wrote to the Premier seeking to discuss the future of the Island. This never happened. The government chose not to consult QYAC as the representative body of Traditional Owners. Instead, it legislated over and around the registered Land Use Agreement to appease its pre-election promises to particular parties who had funded the Premier's election campaign.

Specifically, the government introduced and passed the *North Stradbroke Island Protection and Sustainability and Another Act*



**AUSTRALIAN  
CONSERVATION  
FOUNDATION**



The Hon Mark Butler  
Minister for the Environment, Heritage and Water  
by email: mark.butler.MP@environment.gov.au

25 July 2013

Dear Minister,

**EPBC Approval required for Sibelco Enterprise Mine, North Stradbroke Island**

We commend your recent announcement that the government intends to retain approval powers under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), rather than delegate these to state governments.

Our organisations are concerned that the Enterprise Mine, operated by Sibelco Australia Ltd (Sibelco) on North Stradbroke Island just offshore from Brisbane is contravening the EPBC Act by causing a significant impact on several matters of national environmental significance without referral or approval under the Act. In our view, this appears to be a very serious ongoing contravention of the Act. We urge you to immediately exercise your powers under section 70 of the EPBC Act to request that Sibelco Australia Ltd refer the Enterprise Mine under the EPBC Act.

Friends of Stradbroke Island Inc. (FOSI) have previously notified Sibelco and your department that they are considering filing proceedings in the Federal Court if the Enterprise Mine was not referred by 19 July 2013. We attach letters to your Department dated 2 July 2013 and 28 September 2012 from Carew Lawyers (on behalf of FOSI).

The Enterprise Mine has recently been the subject of media attention due to a proposal by Sibelco to expand and extend the life of the mine. Questions about the relationship between Sibelco and the Queensland Government have also been raised in the Queensland Parliament. For example, we refer you to the following story on ABC 7:30 <http://www.abc.net.au/7.30/content/2013/s3806274.htm> and subsequent item on ABC News: <http://www.abc.net.au/news/2013-07-19/north-stradbroke-sand-mining-a-dirty-deal/4832118?section=qld>

We are of the view that you and your Department should satisfy yourselves that Sibelco has sought to obtain all necessary approvals under the EPBC Act, and if they have not, commence action to require the company to seek to obtain the necessary approvals for its current and past operations.



We would be pleased to brief you or your staff on this issue. Jonathan La Nauze from ACF will shortly be touch with your office to discuss this possibility.


Sincerely,

Don Henry  
CEO  
Australian Conservation Foundation

Sue Ellen Carew  
President  
Friends of Stradbroke Island Inc.

Cameron Costello  
Chairperson  
Quandamooka Yoolooburrabee Aboriginal Corporation

Please address return correspondence to:

A red rectangular box is positioned below the text 'Please address return correspondence to:'. The box is empty and serves as a placeholder for the return address.

CarewLawyers

Brisbane  
Level 32 239 George Street Brisbane Q 4000  
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2 July, 2013

All mail to:  
PO Box 13328 George Street Brisbane Q 4003

Our ref: RC:11117016

mailto:carewlawyers.com.au  
www.carewlawyers.com.au

The Director  
Compliance and Enforcement Branch  
Department of Sustainability, Environment, Water, Population and Communities  
GPO Box 787  
CANBERRA ACT 2601

Partners  
Richard Carew  
Darren Moore Acc. Spec. (Pers. Off.) \*  
Greg Spinda

Dear Sir/Madam

**CONTRAVENTION OF THE EPBC ACT BY SIBELCO AUSTRALIA LTD IN  
OPERATING THE ENTERPRISE MINE, NORTH STRADBROKE ISLAND,  
QUEENSLAND**

We refer to our letter dated 28 September, 2012 and to our subsequent email correspondence with [redacted] of your office.

We enclose a copy of a letter to Sibelco's legal representatives dated 28 June, 2013. We will email the documents referred to in the third last paragraph of that letter when we email a copy of this letter to your office.

We note that although we have exchanged various emails with your [redacted] [redacted] we have not received a formal response to our letter of 28 September, 2012. Would you please respond formally to that letter and the enclosed letter as soon as possible. Naturally, our client, which is a small community based environment group, would prefer the commonwealth to take action to enforce commonwealth laws.

Yours Faithfully

[redacted]  
Richard Carew  
Partner

CarewLawyers

28 June 2013

Your ref: JIB 07 1422 4080  
Our ref: RC:11117016

Mr John Briggs  
Partner  
Ashursts  
Level 38, Riverside Centre  
123 Eagle Street  
Brisbane Qld 4000

Dear Mr Briggs,

### ENTERPRISE MINE, NORTH STRADBROKE ISLAND

We refer to our letters of 4 November 2011, 1 December 2011, 9 December 2011 and 28 September, 2012 and to your replies dated 23 November 2011 and 22 December, 2011, regarding the lack of approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) for the Enterprise Mine on North Stradbroke Island operated by your client, Sibelco Australia Limited.

In our letter of 28 September, to which we have not received a response, we briefly summarised our respective clients' positions as follows:-

- Our clients' concern relates to whether the Enterprise mine is operating lawfully;
- It appears that the mine has not been approved under the EPBC Act;
- Approval under the EPBC Act is required where mining has caused or is likely to cause a significant impact on a matter of national environmental significance, unless sections 43A or 43B or some other provision render approval unnecessary;
- Our clients considered the 'significant impact' element to be obvious, having regard to the scale of the mine and its proximity to matters of national environmental significance such as the adjacent Eighteen Mile Swamp, which is part of the Moreton Bay Ramsar Wetland;
- Our clients explained in detail why they considered that neither s.43A or 43B assisted your clients, but provided your clients with an opportunity to provide evidence that they were incorrect;
- Your clients declined to respond to that opportunity, taking the position that our clients were making assumptions about the mine having an actual or likely significant impact on a matter of national environmental significance.

Our letter of 28 September was accompanied by a preliminary report provided to our clients by Dr Errol Stock, who in the past was consulted by Consolidated Rutile Limited because of his expertise in the hydrology of North Stradbroke island. It was

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Partners  
Richard Carew  
Darren Moore Acc. Spec. (Per. v. l.) \*  
Greg Spinda

prepared in compliance with the Federal Court's practice direction to expert witnesses in case it became necessary to apply to that Court for intervention.

Our letter drew your client's attention in particular to section 8 of Dr Stock's report in which he considers the significance of the changes in groundwater already caused and likely to be caused in the future by Enterprise Mine to the adjacent Ramwar Wetland. Dr Stock concludes in relation to the permanent change in hydrology the mine will cause that:

"The 8-kilometre-long disruption by the Enterprise Mine represents roughly 25 per cent of the 26-kilometre long length of Eighteen Mile Swamp that receives groundwater from the high dunes and escarpment. The mine is likely to cause permanent changes that lead to more rapid increases of groundwater flows along, about, a quarter of the length of Eighteen Mile Swamp. In relation to the EPBC Act the Enterprise Mine, in my opinion, will have "a substantial and measurable change in the hydrological regime of the wetland [through]... a substantial change to the volume, timing, duration and frequency of ground... water flows to ... the wetland". If the permanent and similar impacts of the Yarraman Mine already made in the far north of the Island are added to those from Enterprise (Ibis), mining along the Island's eastern seaboard will have affected even more of the hydrological regime of Eighteen Mile Swamp."


Our letter of 28 September, 2012 also informed you that our clients had referred the matter to the Compliance and Enforcement Branch of the Department of Sustainability, Environment, Water, Population and Communities regarding the apparent contravention of the EPBC Act by your client. We attached a copy of our letter, also dated 28 September, 2012, to the Director of that unit for your information.

With the email attaching this letter we will attach a draft Federal Court application and Statement of Claim (which may be amended before filing). We will also attach a Department of Environment and Heritage Protection overlay of boundaries of the Ramsar wetland and the Enterprise mine, revealing the proximity of the mine to the protected wetland.

Our client is considering filing the attached proceedings in the Federal Court unless within 21 days your client:

1. Undertakes to refer within 30 days the operation of the Enterprise Mine for approval under the EPBC Act; or
2. Provides satisfactory evidence that no approval is required under the EPBC Act because of ss 43A or 43B of the Act or some other reason.

If your client is not willing to give such an undertaking or provide such evidence, please advise us within 21 days whether you have instructions to accept service of the proceedings.

  
Yours Faithfully

  
Richard Carew

cc. Commonwealth Department of Sustainability, Environment, Water, Population and Communities

CarewLawyers

28 September, 2012

Our ref: RC:11117016

[Redacted]  
Director  
Regulatory Practice Section  
Compliance and Enforcement Branch  
Department of Sustainability, Environment, Water, Population and Communities  
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Richard Carew  
Darren Moore Acc. Spec. (Pers. Inj) \*  
Greg Spinda

[Redacted]  
[Redacted]  
**CONTRAVENTION OF THE EPBC ACT BY SIBELCO AUSTRALIA LTD IN  
OPERATING THE ENTERPRISE MINE, NORTH STRADBROKE ISLAND,  
QUEENSLAND**

We act on behalf of Friends of Stradbroke Island (FOSI) and a number of the island's traditional owners

Our clients are concerned that the Enterprise Mine operated by Sibelco Australia Ltd on North Stradbroke Island in Queensland is contravening the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (EPBC Act) by causing a significant impact to the Moreton Bay Ramsar Wetland, listed threatened species and listed migratory species in circumstances where the mine has not been approved under the Act.

The mine commenced operation in 2004 and is currently approved under Queensland law to operate until 31 December, 2019.

Our clients understand that no approval for the mine has been sought under the EPBC Act. Our clients have reviewed the history of the grant of the relevant mining leases and environmental authorities for the mine under State legislation and understand that it was not fully approved or a lawful continuation of the use of land at the date of commencement of the EPBC Act on 16 July 2000. Consequently, the mine is not exempt from requiring approval under the EPBC Act due to sections 43A or 43B of the Act.

We wrote to Sibelco Australia Ltd on 4 November 2011 regarding the lack of approval for the mine under the EPBC Act and received a reply from its solicitor,



Blake Dawson, on 23 November 2011.<sup>1</sup> We wrote to the company's solicitor on 1 December 2011 and 9 December 2011 to which we received stonewalling replies that declined to explain whether and how the company relies upon sections 43A and 43B of the EPBC Act as the basis for never seeking approval under the Act.

Our clients have since obtained a preliminary report from Dr Errol Stock, an expert in the hydrology of North Stradbroke island. We attach a copy of his report dated September 2012. Given the potential that this report will be used in litigation in the Federal Court for an injunction to restrain the operation of the Enterprise Mine, it has been prepared in compliance with the Federal Court's practice direction to expert witnesses.

We draw your attention in particular to section 8 of Dr Stock's report in which he considers the significance of the changes in groundwater already caused and likely to be caused in the future by Enterprise Mine to the adjacent section of the Moreton Bay Ramsar Wetland, which includes an area known as Eighteen Mile Swamp. Dr Stock refers to your Department's guidelines on significant impacts to matters of national environmental significance to form his opinion. Dr Stock concludes in relation to the permanent change in the hydrology to the Ramsar Wetland the mine will cause that:

"The 8-kilometre-long disruption by the Enterprise Mine represents roughly 25 per cent of the 26-kilometre long length of Eighteen Mile Swamp that receives groundwater from the high dunes and escarpment. The mine is likely to cause permanent changes that lead to more rapid increases of groundwater flows along, about, a quarter of the length of Eighteen Mile Swamp. In relation to the EPBC Act the Enterprise Mine, in my opinion, will have "a substantial and measurable change in the hydrological regime of the wetland [through]... a substantial change to the volume, timing, duration and frequency of ground... water flows to ... the wetland". If the permanent and similar impacts of the Yarraman Mine already made in the far north of the Island are added to those from Enterprise (/Ibis), mining along the Island's eastern seaboard will have affected even more of the hydrological regime of Eighteen Mile Swamp."

In addition to Dr Stock's report, we attach<sup>2</sup> the 2011 Plan of Operations for the company's mines on North Stradbroke Island, including Enterprise Mine, prepared by Unimin Australia Ltd. The 2011 Plan of Operations has numerous references to the EPBC Act, including listing numerous EPBC Act threatened and migratory species being identified on the Enterprise Study Area in March 2001. It also refers to the EPBC Act and the fact that part of North Stradbroke Island is a Ramsar Wetland in the Land Management Plan in Appendix F (pp 3-4). Despite the recognition of these points, the 2011 Plan of Operations does not explain why the mine has not sought approval under the EPBC Act. No reference is made to sections 43A or 43B of the Act by way of explanation of this inconsistency. Clearly the company was aware of the EPBC Act and its potential impact on matters of national environmental significance but chose not to seek approval.

In relation to the high level of knowledge of Sibelco Australia Ltd (formerly named Unimin Australia Ltd, before name change in December, 2010) of environmental

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<sup>1</sup> We note for your reference their address for correspondence (now Ashurst): Mr John Briggs, Partner, Ashurst, Level 38, Riverside Centre, 123 Eagle Street, Brisbane Qld 4000.

<sup>2</sup> Due to the file size of the 2011 Plan of Operations (of 36 MB), this attachment is only included in the postal version of this correspondence.

approvals and another occasion where it has wrongly chosen not to seek all necessary approvals, we draw your attention to the following litigation:

- *Unimin Australia Limited v State of Queensland* [2009] QSC 384<sup>3</sup>
- *Unimin Australia Limited v State of Queensland* [2010] QCA 169<sup>4</sup>

In those cases the Queensland Supreme Court and Court of Appeal found that the company had no lawful authority to take and sell non-mineral sand from another of its mines on North Stradbroke Island without local government planning approval, which it did not have. The company is currently facing two criminal charges in relation to the unlawful removal of non-mineral sand from this mine without required permits. The charges are to go to trial in the Brisbane Magistrates Court commencing on 19 November, 2012.

Our clients also obtained an opinion from two expert criminal lawyers, one a Senior Counsel, that there is a prima facie case of stealing and misappropriation/fraud against the company and this has been provided to the Queensland government but no further charges have yet been brought.

Our clients request that your Department investigate whether a contravention of the EPBC Act has occurred and is occurring in relation to the operation of Enterprise Mine on North Stradbroke Island.

In our clients' view, this appears to be a very serious and ongoing contravention of the EPBC Act. Given the level of knowledge of the company, it is also quite possibly a calculated breach of the EPBC Act.

Having regard to your Department's published enforcement guidelines and the past cases in which your Minister has successfully sought pecuniary penalties from offenders,<sup>5</sup> our clients consider that if Sibelco Australia Ltd does belatedly apply for approval under the EPBC Act, a significant pecuniary penalty should still be sought for the contravention of the Act.

If the company refuses to refer the mine for approval and cannot satisfy the Department that sections 43A or 43B of the Act apply, our clients consider that an injunction should be sought against the company. Our clients are prepared to seek such an injunction under section 475 of the Act but defer to your Department and your Minister at this stage pending your response to this correspondence.

As a final matter, we note that in Dr Stock's opinion the consultants' reports and monitoring regime for groundwater impacts from the Enterprise Mine are seriously deficient.<sup>6</sup> Should Sibelco Australia Ltd seek to rely upon these reports and monitoring results in correspondence with the Department or a referral of Enterprise Mine under the EPBC Act, our clients are concerned that the company will be

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<sup>3</sup> Available at <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/qld/QSC/2009/384.html>

<sup>4</sup> Available at <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/qld/QCA/2010/169.html>

<sup>5</sup> *Minister for the Environment & Heritage v Greentree (No 3)* [2004] FCA 1317; *Minister for Environment Heritage and the Arts v Lamattina* [2009] FCA 753; and *Minister for Sustainability, Environment, Water, Population and Communities v De Bono* [2012] FCA 643.

<sup>6</sup> See sections 3-5 of Dr Stock's report.

providing false and misleading information in contravention of sections 489 or 491 of the EPBC Act. We draw this matter to your attention.

Please contact us if you require further information in relation to this matter. We are able to supply the Queensland approvals for the mine and all relevant documents that we have obtained should you request them.

[REDACTED]  
Yours Faithfully

[REDACTED]  
Richard Carew  
Partner

**Attachments:<sup>7</sup>**

1. Dr Errol Stock, "Preliminary review of the hydrological impacts of Enterprise Mine on the ecological character of Eighteen Mile Swamp within the Moreton Bay Ramsar Wetland", September 2012.
2. Unimin Australia Ltd, "2011 Plan of Operations [for mines on North Stradbroke Island]".

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<sup>7</sup> Note: Due to the file size of the 2011 Plan of Operations (of 36 MB), this attachment is only included in a CD sent with the postal version of this correspondence. Dr Stock's report is included with both versions of this letter.