

North Stradbroke Island Protection and Sustainability Bill 2011

Explanatory Notes

Short title

The short title of the bill is the *North Stradbroke Island Protection and Sustainability Act 2011*.

Policy objectives and the reasons for them

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.

On 20 June 2010, the Premier announced the government's vision for a sustainable NSI. The strategy includes the phasing out of mining and dedication of up to 80 percent of the island as protected area, to be jointly managed with the Traditional Owners of the region, by 2027. Over half of the island is to be protected area by the end of 2011.

The Premier announced that legislation would be introduced into Parliament to create a clear timetable for the end of sand mining on the island, and the need to start planning a transition towards a more economical and environmentally sustainable use of the land through, for example, nature based tourism, education, and recreation. As many mining leases on NSI have expired or are approaching expiry, and the mining

company has indicated that Yarraman Mine (which represents between one third and one half of mining's contribution to jobs and the NSI economy) will close in 2015, a unique opportunity presents itself to start planning this transition, and for the protection, rehabilitation and enhancement of the significant natural and cultural values of the Region.

Creating a mine-free NSI will greatly assist the development and growth of businesses and employment opportunities in ecologically sustainable tourism and other like activities.

Another policy objective is the resolution of land tenure issues in the NSI Region. A native title determination in the Federal Court in favour of the Traditional Owners, the Quandamooka People, is imminent. The Government seeks to affirm and support both the Quandamooka People's ongoing connection to the land, and their desire to see it protected and preserved, in a way that will also lead to economic, social and cultural development opportunities for the Quandamooka People.

The Bill also seeks, where appropriate, to smooth particular administrative processes for the granting of Aboriginal freehold in the NSI Region.

Achievement of policy objectives

The Bill will achieve its objective of substantially ending mining activities (including all heavy mineral sand mining) in the NSI Region by the end of 2019, and ending all mining in the Region by 2025, by ensuring mining interests for:

- Yarraman Mine end at the end of 2015;
- Enterprise Mine end at the end of 2019; and
- Vance Mine end on 31 October 2025.

This is achieved by renewing or extending certain leases needed for mining until those dates. The Bill does not terminate before its expiry any mining lease on which there will be an active mine at the time of termination, but provides that no interests can be renewed beyond those dates. The Bill terminates leases not needed for mining at the end of 2019, if they have not expired beforehand.

The Bill also restricts the mine path for Enterprise Mine, to ensure that future mining avoids areas of high conservation value as much as possible. The restricted mine path is designed to allow mining at current rates until the end of 2019, whilst avoiding areas of high conservation value, such as

endangered regional ecosystems. Additionally, the restriction will prevent the acceleration of mining operations, which could result in Enterprise Mine having the same environmental impacts as if mining had continued for longer. A similar approach is not considered necessary for Yarraman Mine, which Sibelco (the only active mining company on NSI) had announced would close in 2015 in any event due to the depletion of its resource, or Vance which is a silica mine with a relatively small annual footprint.

The Bill amends the environmental authority under the *Environmental Protection Act 1994* for Enterprise Mine to ensure active mining ceases at the end of 2019. This addresses an issue with Mining Lease 1105, connected with Enterprise Mine, which expires in 2021. This is considered justified by the fact that the mine path proposed by the mining company itself only covers a small area of Mining Lease 1105, which, given the current direction of mining, is likely to have been mined before 2019. The majority of the mine path for this mine is on a lease adjacent to ML1105 (ML1117) which expired in 2007 and which is proposed to be renewed until December 2019 as part of the balanced resolution of the competing interests on NSI.

The Bill will achieve its objective of the staged creation of areas that are to be jointly managed by the State and the Traditional Owners of the region firstly by providing that freehold title for traditional owners and protected area status can co-exist over the same land, and secondly by establishing formal joint management arrangements for that protected area. The existing *Aboriginal Land Act 1991* (ALA) arrangement for achieving protected area over Aboriginal land involves requiring the ALA freehold titleholders to lease the land back to the State in perpetuity to facilitate the land's dedication as a protected area. This model has not been used in practice. The Cape York model, created by the *Cape York Peninsula Heritage Act 2007*, achieves the same outcome by simply providing that Aboriginal land can be protected area in perpetuity. As the Cape York model is preferred by traditional owner stakeholders, the Bill replicates the Cape York model for the NSI Region, with appropriate variations.

The Bill establishes a new statutory status called Indigenous Joint Management (IJM) in the *Nature Conservation Act 1992*. IJM will be applied as an overlay to protected areas and imports the key characteristics of national park (Cape York Peninsula Aboriginal land), but can attach to a number of classes of protected area.

The Bill will achieve its objective of smoothing particular administrative processes for the granting of Aboriginal freehold in the NSI Region by declaring certain land to be transferrable for the purposes of the ALA, and providing for the opening and closing of roads on land to become ALA freehold.

These approaches to achieving the Bill's objectives are effective. The mining phase out provisions are straightforward and clear, and the land tenure and joint management provisions follow an already-established model.

The approaches are also reasonable, proportionate, and appropriate, because they resolve, or provide frameworks for the resolution of, the interconnected issues of mining, Aboriginal land rights, and the environment on NSI in ways that balance the impacts on each stakeholder. Mining is to continue for an intermediate period, allowing the mining company a 9 to 15 year adjustment period and allowing time for an alternative economy to develop. The Traditional Owners will progressively be granted freehold title over 80% of the island which they will jointly manage as protected area with the State and further freehold land that they will be able to occupy or develop for their social and economic benefit. The environmental and cultural values of the Region will be protected, from which the general public will benefit.

The smoothing of administrative processes takes effect on commencement in relation to certain specified land and roads only, and will be subject to the scrutiny of Parliament in place of the transparency measures incorporated into the usual processes.

The approaches to achieving the Bill's objectives are to be viewed in the context of other Government initiatives for NSI, such as the economic transition strategy to assist the NSI community to develop an economy that does not rely on mining.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the Bill's policy objectives that would provide stakeholders with clarity and certainty and achieve the policy objectives other than the proposed Bill. The possibility of using existing administration powers under the *Mineral Resources Act 1985* and the *Environmental Protection Act 1994* was explored. This option is not suitable because administrative action to renew or terminate mining leases depends on exercises of discretion years into the future, and therefore offers no certainty

to stakeholders and does not provide the optimal environment for the development and growth of businesses and employment opportunities in ecologically sustainable tourism and other like activities.

There are alternative timetables for the phasing out of mining. The current position is that Yarraman is scheduled by the company to end in 2015 due to resource depletion, the primary lease for Vance expires in 2025, and the primary lease for Enterprise has expired and has a renewal application pending. Sibelco has published its preferred timetable, which is for Yarraman and Vance to end in 2015 and Enterprise in 2027. The Bill represents a balanced approach between the impacts of these scenarios.

The significant benefit of land ownership and the earlier and more efficient resolution of outstanding land tenure issues with the Quandamooka People are key outcomes of the way the Bill achieves the policy objectives. Aboriginal land granted to the Quandamooka People is to be jointly managed as protected area in perpetuity, providing new employment opportunities for traditional owners. The broader community will benefit from the protection and restoration of environmental values on 13,000 hectares of mining land earlier than would have been the case. In turn the creation of new protected areas provides opportunities for businesses to pursue and develop a diversity of nature and wildlife based tourism and recreational experiences. Other key benefits of the Bill's approach include earlier protection and restoration of unique environmental values and cultural heritage that would otherwise have been destroyed or degraded.

The land tenure model that the Bill establishes for the NSI Region is based on the Cape York model, which has the endorsement of all Cape York stakeholders, and could not be established other than by legislation.

Estimated cost for government implementation

The cost of administering the North Stradbroke Island Protection and Sustainability Bill 2011 as it relates to the management of mining leases, including environmental management will be managed within the existing budgets of the Department of the Environment and Resource Management and the Department of Employment Economic Development and Innovation. Both departments already manage these matters on NSI and the cost implications are similar to current requirements.

The Government has allocated \$27.5 million over five years for the implementation of the NSI strategy. This budget includes the establishment and joint management of protected areas in the NSI Region,

and funding and implementing the Indigenous Land Use Agreement with the Quandamooka People.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Legislation should not provide for the compulsory acquisition of property without fair compensation - *Legislative Standards Act 1992*, section 4(3)(i)

It is arguable that a mining lease is a property right, and several mining leases will be terminated before they expire, with no compensation payable. However, 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. The Bill also renews or extends leases on each of the other two mines. This is considered to be a reasonable balance in the circumstances having regard to the environmental and biodiversity impacts of each mine and the cultural values that are held by the Quandamooka People for the NSI Region.

Equality under the law;

Balancing individual and community or more general interests

Clause 10 removes the right to apply for, or seek a renewal of, mining interests. Any renewal applications for mining interests in the NSI Region made prior to commencement of the Bill cannot be granted (although a number of these interests will be renewed by the bill itself, to the end date for the relevant mine). This applies equally to all mining leases in the NSI Region. The principle of equal treatment under the law is relevant as the right to apply for or, seek renewals of mining leases elsewhere in the State remains unchanged by the Bill. The principle that there should be a balance between individual and community interests is also relevant, as the Bill is part of an overall policy package (the government's strategy for NSI) that aims to achieve an appropriate balance between the interests of some individuals (Traditional Owners, Sibelco, and others dependent on the mining-based economy) and the community interest in appropriately acknowledging Traditional Owners and in securing the environmental and cultural values of NSI for generations to come.

Clause 16 amends the environmental authority issued under the *Environmental Protection Act 1994* to restrict the Enterprise Mine path. Undertaking mining activities on a mining lease, or an expired mining lease for which a properly made application for renewal has been made, may normally be perceived as a right of the holder of a mining lease. It could be argued that by amending the environmental authority to restrict the Enterprise Mine path, the Bill restricts the mining company's ability to reasonably undertake ordinary mining activities at the Enterprise Mine in a way that does not apply to other mine operators.

In the case of Enterprise mine, the main lease ML1117 has expired and is subject to renewal. Under the *Mineral Resources Act 1989*, renewal can be made subject to conditions. In a similar fashion, the restriction of the mine path can be seen as a condition of the renewal of that lease provided for by this Bill.

Further, restricting the Enterprise mine path is justified by the outcome that it will increase environmental protection and minimise potential environmental harm by containing mining activities as much as possible to areas already disturbed by mining. Phasing out mining by a particular date will fail to deliver the intended protection for the environment if the rate of mining is allowed to substantially increase until that date. The following issues were considered in determining the restricted mine path:

- The current leaseholder's own projected mine path was used to estimate the area of land and resource that might be required until 2019;
- logical boundaries and endpoints for mining activities based on the environmental impact of the mine and the identified biodiversity and environmental values at and adjacent to the currently proposed mine path were observed; and
- the mine path was restricted to already-disturbed areas as much as possible.

The Bill allows the Minister administering the *Environmental Protection Act 1994*, on the application of the mining company, to amend the mine path within three months of commencement if the amendment is necessary to allow mining at current rates until the end date for the mine. This is to allow flexibility in the event that the mining company is able to demonstrate, for example, that the restricted mine path covers an area of low mineral presence that would not sustain mining.

The Bill does not remove the right of the holder of the environmental authority to use the normal processes under the *Environmental Protection Act 1994* to apply to amend the environmental authority at any time. The Bill does, however, limit the amendments in relation to the mine path to those that are reasonably necessary to facilitate mining, and that do not have the overall effect of increasing the mine path area by more than 5%. Again, this is necessary to ensure the intended positive environmental outcomes cannot be undermined.

The Government's strategy for NSI outlines the justification for the unequal treatment under the law and strikes an appropriate balance between individual and community interests. In short, the island contains very high conservation, biodiversity and cultural values and there is a need to start planning for a transition towards a more economically and environmentally sustainable use of the island. This is particularly relevant given Sibelco's intention to close Yarraman Mine in 2015 and substantial population increases expected in South-East Queensland over the next 20 years.

Consultation

After the Premier's announcement in June 2010, extensive community consultation on the government's vision for NSI was been undertaken. A range of information about the vision for NSI was published on the website of the Department of Environment and Resource Management and the community were invited to provide submissions on the vision. During the consultation period the Department conducted two community forums: one at Dunwich and Cleveland.

Because the Bill implements policies on which there was broad consultation, there has not been significant consultation on the Bill itself.

In February 2011, the Quandamooka People were consulted on an exposure draft of the provisions of the Bill that amend the *Aboriginal Land Act 1991* and the *Nature Conservation Act 1992*.

The company which owns and operates all three mines on NSI has been consulted during 2010 and 2011 on the proposal to end mining.

Results of consultation

No significant issues were raised by the Quandamooka People in relation to the exposure draft of the Bill.

In relation to consultation on the NSI Vision, there was strong community support for the Government's vision for NSI, with particularly strong support for ending mining *before 2027* which was favoured by 50% of the respondents. A further 27% supported the vision, with only 20% opposed. Even disregarding 'form letter' responses, 57% of the remaining respondents supported the vision and 39% opposed.

In response to the Queensland Government's Vision for North Stradbroke Island, Sibelco released its '*Sustainable Stradbroke Vision*' proposing that it be implemented. The key proposed outcomes of the company's vision include:

- ending mining at the Vance and Yarraman mines in 2015 in return for the renewal of ML 1117 to enable mining to continue at Enterprise until 2027 at an accelerated rate using the production capacity and workforce from the Yarraman mine as it closes;
- support the continuation of dry mining beyond the Enterprise dredge pit; and
- surrendering all leases not required for the Enterprise mine path and ending all mining in the north of the island by 2015, allowing for the early creation of national park and removing trucks from the northern end of the island.

Notes on Provisions

Part 1 Preliminary

Division 1 Introduction and object of the Act

1 Short title

Clause 1 states that the Bill may be cited as the *North Stradbroke Island Protection and Sustainability Act 2011*.

2 Object of Act

Clause 2 states that the object of the Bill is to substantially end mining interests in the North Stradbroke Island Region (NSI Region) by the end of 2019, and to end mining in the Region altogether in 2025. The end of mining in the NSI Region will enable the protection and restoration of the environmental values of the region; and will facilitate, through other existing Acts, the staged creation of areas to be jointly managed by the State and the traditional owners of the region. More detail on the object of the Bill is provided above.

3 Act binds all persons

Clause 3 states that all persons are bound by the Bill to the extent that legislative power permits.

Division 2 Interpretation

4 Dictionary

Clause 4 provides that the dictionary in schedule 3 defines particular words used in the Bill.

5 Meaning of *North Stradbroke Island Region*

Clause 5 defines the North Stradbroke Island Region by reference to a map held by the Department of Environment and Resource Management. The Region comprises North Stradbroke and Peel Islands, mostly to the high water mark but in places on Peel Island, to the low water mark.

Part 2 Dealing with mining interests in the North Stradbroke Island Region

Division 1 General provision

6 No compensation

Clause 6 states that no compensation, reimbursement, or other payment types are payable by the State to any person for or in connection with Part

2. This includes the termination and non-renewal of mining leases. The fundamental legislative principles issues raised by this provision are discussed above.

Division 2 Provisions about mining interests

7 Application of pt 2

Clause 7 states that Part 2 applies only to NSI mining interests (including the granting of NSI mining interests). ‘NSI mining interest’ is defined in the dictionary in Schedule 3. Part 2 applies despite any other legislation, in particular the *Mineral Resources Act 1989*.

8 Termination of particular NSI mining interests

Clause 8 states that NSI mining interests that would otherwise expire after 31 December 2019 will reach the end of their terms at midnight on 31 December 2019. Holders of these interests cannot apply for renewal, and the interests cannot be renewed.

Five exceptions are specified:

- (a) 1105 (Enterprise Mine) is allowed to continue until it expires in 2021. Only a small portion of 1105 is within the Enterprise mine path, and the mining company has ample opportunity to exploit that portion before mining ceases at the end of 2019 pursuant to the time limit imposed on exploiting the mine path in clause 17.
- (b) 1108 (Vance Mine) is allowed to continue until it expires in October 2025.
- (c) 1109 (Yarraman Mine) is dealt with in clause 9.
- (d) 1124 (Vance Mine) is renewed by clause 11 to facilitate the 2025 end date for Vance.
- (e) 7064 (Vance Mine) is extended by clause 12 to facilitate the 2025 end date for Vance.

All rehabilitation requirements under the relevant environmental authority issued under the *Environmental Protection Act 1994* will continue until discharged, regardless of the end date of each mining lease.

9 Termination of mining lease 1109

Clause 9 provides that mining lease 1109 (Yarraman Mine) ends at the end of 2015. The lease holder has indicated that Yarraman Mine will cease operations in 2015 and this clause provides certainty to stakeholders of that closure.

All rehabilitation requirements under the relevant environmental authority issued under the *Environmental Protection Act 1994* will continue until discharged, regardless of the end date of the mining lease.

10 Particular NSI mining interests not to be renewed

Clause 10 applies to NSI mining interests not dealt with in clauses 8, 9, 11 (schedule 1) or 12 (schedule 2). It provides that renewal applications already made cannot be dealt with and are deemed withdrawn; future applications cannot be made; and renewals cannot be granted.

The deemed withdrawal has the effect that section 286C of the *Mineral Resources Act 1989* ceases to apply, and the lease ends immediately.

All rehabilitation requirements under the relevant environmental authority issued under the *Environmental Protection Act 1994* will continue until discharged, despite the non-renewal, regardless of the end date of the lease.

11 Renewal of particular NSI mining leases

Clause 11 facilitates mining until the end date for each mine by providing for specified already-expired leases to be renewed. Clause 11 deals with already-expired leases, for each of which an application for renewal has been received by the Government.

Upon renewal, the conditions attached to the lease prior to its expiry are continued, and in some cases a new condition is attached – that the winning of a mineral from the place where it occurs is not permitted under the lease. Section 6A of the *Mineral Resources Act 1989* provides a three limb definition of *mine*, of which the winning of mineral is the first limb. ‘Winning mineral from the place where it occurs’ essentially means the process of obtaining raw earth or sand from the ground. The other two aspects of mining are the extraction of the desired mineral from the raw earth or sand, and the disposal of both the mineral and the unwanted remainder of the earth or sand. The intention of the ‘no winning’ condition is to prohibit the first, but permit the second and third.

Subclause 11(8) makes it clear that no new rights are created, either explicitly or inadvertently, in the renewal. The clause merely renews, with

the only other effect being a reduction of rights under some leases with winning not able to occur.

12 Variation of conditions for particular NSI mining leases

Clause 12 facilitates mining until the end date for each mine by providing for specified leases that will expire according to their terms prior to the relevant end date to be extended.

Upon extension, the conditions attached to the lease prior to its expiry are continued, and in some cases a new condition is attached – that the winning of a mineral from the place where it occurs is not permitted under the lease. See discussion under Clause 11 for explanation of this term.

Subclause 12(7) makes it clear that no new rights are created, either explicitly or inadvertently, in the extension. The clause merely extends, with the only other effect being a reduction of rights under some leases with winning not able to occur.

13 Dealing with applications for grant of NSI mining interest

Clause 13, together with Clause 14, renders redundant Restricted Area 380, which was created in June 2010 as an administrative process under the *Mineral Resources Act 1989* to prevent the further issue of mining tenements, including exploration permits, in the NSI Region. Clause 13 provides that applications for grants of NSI mining interests made before commencement, but not decided, cannot be granted, and are taken to have been withdrawn. New applications are prohibited.

‘NSI mining interest’ is defined in schedule 3 to mean any lease, licence, permit or other instrument authorised under the *Mineral Resources Act 1989*, the *Petroleum Act 1923* or the *Petroleum and Gas Production and Safety) Act 2004* over land in the NSI Region. The effect of Clauses 13 and 14 is that no further mining interest can ever be granted over land in the NSI Region.

14 Prohibition on grant of NSI mining interest

Clause 14, together with Clause 13, renders redundant Restricted Area 380, which was created in June 2010 as an administrative process under the *Mineral Resources Act 1989* to prevent the further issue of mining tenements, including exploration permits, in the NSI Region. Clause 14 provides that no NSI mining interest can be granted. NSI mining interest is defined in schedule 3 to mean any lease, licence, permit or other instrument authorised under the *Mineral Resources Act 1989*, the *Petroleum Act 1923* or the *Petroleum and Gas Production and Safety) Act 2004* over land in the

NSI Region. The effect of Clauses 13 and 14 is that no further mining interest can ever be granted over land in the NSI Region.

Division 3 Provision about particular environmental authority

15 Purpose of div 3

Clause 15 notes that the purpose of division 3 is to amend a particular environmental authority. This environmental authority relates to Enterprise Mine.

16 Definitions for div 3

Clause 16 defines particular expressions used in division 3.

‘Amendment application’ means an application under the *Environmental Protection Act 1994* to amend an environmental authority.

‘Enterprise Mine lease’ refers to mining leases 1105 and 1117, the leases on which active mining is to be allowed.

‘Restricted mine path’ means an area shown on a map held by the Department of Environment and Resource Management. The area is a pro rata (to the end of 2019) portion of the 2027 mine path the mining company incorporated into its plan of operations, submitted to the Department under the *Environmental Protection Act 1994*. The area avoids endangered and of concern ecosystems and adjacent buffering vegetation, and as far as possible, covers only already-disturbed land.

Statutory conditions of the environmental authority for Enterprise Mine

Clause 17 adds statutory conditions to the environmental authority for Enterprise Mine to the effect that the winning of mineral (see the explanation of this expression in the notes on Clause 11) may only take place within the restricted mine path, and only until the end of 2019. The purpose of restricting the Enterprise Mine path is to minimise the impacts and potential impacts of mining activities on environmental values both on and surrounding the mine. This includes internationally significant RAMSAR wetlands located only 300 metres from the Enterprise Mine. The ending of mining at Enterprise in 2019 is to achieve the policy objective to balance of the adverse impacts of mining with the need to

allow a reasonable time for leaseholders and, in particular, people whose livelihoods depend directly or indirectly on mining to make the necessary adjustments. Half of that policy balance would not be achieved if the mining company were allowed to accelerate mining rates and disturb a greater area.

The fundamental legislative principles issues raised by this provision are discussed in the notes about fundamental legislative principles above.

18 Application by Enterprise Mine lease holder to amend restricted mine path

Clause 18, in conjunction with Clauses 19 and 20, provides an opportunity for the mining company to apply to the Minister to expand the mine path if it can demonstrate that the restricted mine path is not sufficient to sustain mining until 2019. This may be, for example, if the company can demonstrate that the mineral is not evenly distributed throughout its 2027 mine path, and the restricted mine path covers an area of lower mineral content. This ensures that the Bill does not inadvertently restrict mining more than is intended, but still provide timely certainty to stakeholders by requiring the application within two months of commencement.

The Enterprise Mine leaseholder may apply within two months of commencement to enlarge the mine path. The application must be in the usual form for an amendment to an environmental authority, and supported by enough information for the Minister to make the decision. There is no application fee.

19 Minister to decide application

Clause 19 provides that the Minister must decide the application within four weeks (see *Environmental Protection Regulation 2008*, section 42) The Minister may add an area of land (which may or may not be the same as the area specified in the application) only if:

- (a) the area does not include a threatened ecosystem, as defined in subclause 19(3);
- (b) the Minister is satisfied the increased area is reasonably necessary to facilitate mining at current rates (averaged over the two years prior to commencement) until the end of 2019; and
- (c) the new mine path is consistent with the Enterprise Mine environmental authority.

20 Steps after making decision

Clause 20 provides for administrative processes after the decision is made, and for when the amendment takes effect.

21 Applications to amend restricted mine path of Enterprise Mine lease under the Environmental Protection Act

Clause 21 clarifies that the inclusion of the process described above for expanding the mine path does not preclude applications for amendments to the environmental authority at any time under chapter 5, part 8 of the *Environmental Protection Act 1994*. However, an amendment cannot be made in response to such an application if it would result in the mine path expanding to more than 5% greater than its area on commencement or, if amended under clause 19, its area following that amendment. Similarly, the amendment cannot seek to exploit the mine path beyond 31 December 2019.

This clause ensures that the usual options are available for applications for amendment of the environmental authority, including the mine path, should circumstances change in the future. However, it ensures that the usual options cannot be used to apply for any significant increase the total area of the mine path.

Nothing in the Bill affects the operation of chapter 5, part 12 of the *Environmental Protection Act 1994*, which provides for amendments by the administering authority in certain circumstances.

A nominal expansion of 5% is provided for in case there is a legitimate reason why an expansion is needed in one area and it is not practicable to reduce the mine path in any other area. This allowance ensures flexibility in the event that circumstances arise that cannot be reasonably anticipated now; it is not intended that there be a presumption that a 5% (or any) increase will be granted before the end of 2019.

Part 3 Miscellaneous

22 Opening and closing of road on DP104026

Clause 22 declares open a section of road, and declares closed another section of road. This clause smooths the process for opening and closing of roads, which would otherwise require the formal process for the revocation

of protected area for the road to be opened. This is considered justified in the circumstances as the road to be closed has not been used as a road for a long time, if ever, and the road to be opened is already constructed and used as a road. Achieving the opening and closing on commencement allows the closed road to be included in the land declared transferrable by this bill on commencement (see clause 24), and the opened road to be excluded.

Part 4 Amendment of Acts

Division 1 Amendment of Aboriginal Land Act 1991

23 Act amended

Clause 23 states that division 1 amends the *Aboriginal Land Act 1991*.

24 Amendment of s 12 (Lands that are transferable lands)

Clause 24 inserts lot and plan descriptions into subsection 12(1), with the effect that those lots become transferable land under the *Aboriginal Land Act 1991* (ALA).

Land becoming transferrable is the first step in an ALA process towards the granting of freehold title over the land. The ALA provides for land to be declared transferrable by regulation, but declaring the land transferable in the Bill significantly smoothes administrative processes and reduces the time required to achieve positive land tenure outcomes for Traditional Owners. The *Cape York Peninsula Heritage Act 2007* also amended the ALA to make land transferrable.

25 Amendment of pt 5B, hdg

Clause 25 amends the heading of Part 5B of the ALA (Indigenous Management Agreements and national parks in Cape York Peninsula Region) and omits and replaces terms in order to reflect that this part will apply to land in the NSI Region in addition to the Cape York Peninsula Region.

26 Amendment of s 83F (Entering into indigenous management agreement)

Clause 26 amends section 83F (Entering into indigenous management agreement) to provide for an indigenous management agreement to be entered into prior to the granting of land in the NSI Region, as well as and in the same way as in the Cape York Peninsula Region.

27 Amendment of s 83G (Requirements of indigenous management agreement)

Clause 27 similarly amends section 83G(1)(b) to provide that the requirements for indigenous management agreements in the NSI Region are the same as those in the Cape York Peninsula Region.

The other two sections in part 5B division 1 of the ALA refer to indigenous management agreements without reference to the Cape York Peninsula Region in particular, and will therefore apply to the NSI Region without amendment.

28 Insertion of new pt 5B, div 3

Clause 28 inserts a new part 5B division 3 (Prescribed protected areas in North Stradbroke Island Region) to replicate, with appropriate variations, division 2.

The clause inserts a new section 83KA (Requirement about grant of prescribed protected areas in North Stradbroke Island Region), which has the same effect as section 83J does for Cape York: to require that before land which is one of the specified classes of protected area on NSI is granted under the ALA, the trustee or proposed trustee and the State must enter an indigenous management agreement; and the grant is conditional on the land becoming an indigenous joint management area.

The clause applies to national park (scientific), national park, national park (recovery), conservation park, and resources reserve, the five classes of protected area it is possible may be used in the Region.

29 Amendment of schedule (Dictionary)

Clause 29 inserts and defines two new terms in the ALA dictionary: *indigenous joint management area* by reference to the *Nature Conservation Act 1992*, and North Stradbroke Island Region by reference to this Bill.

Division 2 Amendment of Nature Conservation Act 1992

30 Act amended

Clause 30 states that division 2 amends the *Nature Conservation Act 1992* (the NCA).

31 Amendment of s 15 (Management of protected areas)

Clause 31 amends section 15 of the NCA to provide that it has the same effect for NSI as it does for Cape York: that an indigenous joint management area is to be managed in accordance with any indigenous land use agreement for the area and the indigenous management agreement for the area.

32 Amendment of s 16 (Management principles of national parks (scientific))

Clause 32 amends the management principles for national parks (scientific) when indigenous joint management applies. Management principles for national park (Cape York Peninsula Aboriginal land) are set out in section 19AA: firstly that the land is to be managed as a national park, and, subject to that first principle, is to be managed, as far as practicable, in a way that is consistent with any Aboriginal tradition applicable to the area, including any tradition relating to activities in the area.

This clause replicates that approach by providing that an indigenous joint management area is to be managed firstly as a national park (scientific), and, subject to that first principle, is to be managed, as far as practicable, in a way that is consistent with any Aboriginal tradition applicable to the area, including any tradition relating to activities in the area.

33 Amendment of s 17 (Management principles of national parks)

Clause 33 amends the management principles for national parks when indigenous joint management applies. Management principles for national park (Cape York Peninsula Aboriginal land) are set out in section 19AA: firstly that the land is to be managed as a national park, and, subject to that first principle, is to be managed, as far as practicable, in a way that is consistent with any Aboriginal tradition applicable to the area, including any tradition relating to activities in the area.

This clause replicates that approach by providing that an indigenous joint management area is to be managed firstly as a national park, and, subject to that first principle, is to be managed, as far as practicable, in a way that is consistent with any Aboriginal tradition applicable to the area, including any tradition relating to activities in the area.

34 Amendment of s 19A (Management principles of national parks (recovery))

Clause 34 amends the management principles for national parks (recovery) when indigenous joint management applies. Management principles for national park (Cape York Peninsula Aboriginal land) are set out in section 19AA: firstly that the land is to be managed as a national park, and, subject to that first principle, is to be managed, as far as practicable, in a way that is consistent with any Aboriginal tradition applicable to the area, including any tradition relating to activities in the area.

This clause replicates that approach by providing that an indigenous joint management area is to be managed firstly as a national park (recovery), and, subject to that first principle, is to be managed, as far as practicable, in a way that is consistent with any Aboriginal tradition applicable to the area, including any tradition relating to activities in the area.

35 Amendment of s 20 (Management principles of conservation parks)

Clause 35 amends the management principles for conservation parks when indigenous joint management applies. Management principles for national park (Cape York Peninsula Aboriginal land) are set out in section 19AA: firstly that the land is to be managed as a national park, and, subject to that first principle, is to be managed, as far as practicable, in a way that is consistent with any Aboriginal tradition applicable to the area, including any tradition relating to activities in the area.

This clause replicates that approach by providing that an indigenous joint management area is to be managed firstly as a conservation park, and, subject to that first principle, is to be managed, as far as practicable, in a way that is consistent with any Aboriginal tradition applicable to the area, including any tradition relating to activities in the area.

36 Amendment of s 21 (Management principles of resources reserves)

Clause 36 amends the management principles for resources reserves when indigenous joint management applies. Management principles for national park (Cape York Peninsula Aboriginal land) are set out in section 19AA: firstly that the land is to be managed as a national park, and, subject to that

first principle, is to be managed, as far as practicable, in a way that is consistent with any Aboriginal tradition applicable to the area, including any tradition relating to activities in the area.

This clause replicates that approach by providing that an indigenous joint management area is to be managed firstly as a resources reserve, and, subject to that first principle, is to be managed, as far as practicable, in a way that is consistent with any Aboriginal tradition applicable to the area, including any tradition relating to activities in the area.

37 Amendment of s 32 (Revocation of protected areas)

Clauses 37 to 41 make a number of amendments that clarify the relationship between part 4 division 2 and part 4, division 3, subdivision 3, inserted by clause 44. Despite its title (Protected areas (State land)), division 2 applies to the five classes of protected area over which indigenous joint management can be declared (see section 28). The *Cape York Peninsula Heritage Act 2007* created a new class of protected area, to which division 2 clearly does not apply, but division 2 will apply to indigenous joint management areas unless excluded or displaced either by express words or by a more specific provision that covers the same subject matter.

This Bill therefore replicates the Cape York provisions in division 3 subdivision 2, with appropriate adjustments for the NSI context, but clauses 37 to 41 also insert various clarifying provisions and notes in division 2.

Clause 37 amends section 32 to clarify that it does not apply to protected area that is an indigenous joint management area, and that (new) section 42AK applies instead.

38 Amendment of s 33 (Amalgamation etc. of protected areas)

Clause 38 amends section 33 to clarify that it does not apply to protected area that is an indigenous joint management area, and that (new) section 42AL applies instead. See the notes on clause 37 for further detail.

39 Amendment of s 34 (Leases etc. over protected areas)

Clause 39 amends section 34 to clarify that it does not apply to a protected area that is an indigenous joint management area, and that (new) section 42AN applies instead. See the notes on clause 37 for further detail.

40 Amendment of s 35 (Chief executive's powers about permitted uses in national parks or national parks (recovery))

Clause 40 amends section 35 to clarify that it does not apply to a protected area that is an indigenous joint management area, and that (new) section 42AO applies instead. See the notes on clause 37 for further detail.

41 Amendment of s 36 (Authorities for new national park or national park (recovery))

Clause 41 amends section 36 to clarify that it does not apply to a protected area that is an indigenous joint management area, and that (new) section 42AP applies instead. See the notes on clause 37 for further detail.

42 Amendment of pt 4, div 3, hdg

Clause 42 amends the heading of part 4, division 3 by inserting the words, 'and indigenous joint management areas' at the end of the heading to reflect the extension of the scope of the division to apply to the North Stradbroke Island Region, in addition to the Cape York Peninsula Heritage Region.

43 Amendment of s 40 (Dedication of national park as national park (Aboriginal land) or national park (Torres Strait Islander land))

Clause 43 amends section 40 of the NCA to ensure it does not apply to national park in the NSI Region, just as it does not apply to the Cape York Peninsula Region.

44 Insertion of new pt 4, div 3, sdiv 3

Clause 44 inserts a new subdivision 3 into part 4, division 3 of the NCA. This new subdivision aims to replicate subdivision 2, which applies to the Cape York Peninsula Region, with appropriate variations for the NSI context.

New section 42AG provides that the purpose of this new subdivision is to provide for the declaration of prescribed protected areas in the North Stradbroke Island Region as indigenous joint management areas.

New sections 42AH, 42AI and 42AJ provide for the same outcome – indigenous joint management area over Aboriginal freehold – from different starting points. Section 42AH caters for land that is already protected area and becomes Aboriginal freehold land, and an indigenous management agreement has been entered into. The section requires the Minister to recommend to the Governor in Council that the land be dedicated by regulation as an indigenous joint management area. Despite

any other Act, the declaration under the regulation is taken to have effect on the delivery of the deed of grant over the protected area land to the indigenous landholder for the land.

Section 42AI caters for land that is already Aboriginal freehold but not one of the classes of protected area to which indigenous joint management can apply, an indigenous management agreement has been entered into, and the Minister and the Aboriginal landholder agree that the land should become an indigenous joint management area. The Minister must recommend to the Governor in Council the making of a regulation dedicating the land as a prescribed protected area and declaring the land as an indigenous joint management area.

New section 42AJ caters for other land, that is neither Aboriginal land nor a class of protected area to which indigenous joint management can apply. If an indigenous management agreement has been entered into, the Minister and the landholder agree that the land should become an indigenous joint management area, and the land becomes Aboriginal land, the grant is conditioned on the land becoming protected area and indigenous joint management area, and the Minister must recommend to the Governor in Council that the land is, by regulation, dedicated as a prescribed protected area and declared as an indigenous joint management area.

New Section 42AK provides for the revocation of protected area or indigenous joint management areas. There may be a need to revoke an indigenous joint management area under specific circumstances such as the opening or closing of a road or some other alternative activity. To respect the integrity of the freehold title and the rights of the titleholders, as well as to emphasise the ‘in perpetuity’ nature of the dedication of protected area and declaration if indigenous joint management area, a high threshold is set for revocation. As well as the requirement for a motion to be passed by the Parliament with 28 days notice, as is the case for other protected areas under section 32, new section 42AK requires the freehold title to be surrendered. This ensures that protected area and indigenous joint management area status over Aboriginal land cannot be eroded without the full cooperation of the traditional owners.

This reflects a provision to apply to national park (Cape York Peninsula Aboriginal land) that is currently before Parliament, awaiting debate, in the *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Bill 2010*.

New section 42AL provides for amalgamations, changes in class, and changes to the boundaries of protected areas that are indigenous joint management areas. It provides similar protections. A lowering of the class of protected area can only be done with the consent of the indigenous landholder and on a motion of Parliament with 28 days notice, and the removal of land because of a change in boundaries can only be done with a surrender of title for that land and on a motion of Parliament with 28 days notice.

New section 42AM provides that on the revocation of a prescribed protected area or part thereof, if the area or part is dedicated as another class of protected area then the declaration of the indigenous joint management area continues in force. Otherwise, the declaration of the indigenous joint management area for the protected area or part thereof is taken to have been revoked.

New sections 42AN to 42AP provide for leases, licences, permits and other authorities over land in an indigenous joint management area, and reflect sections 34 to 36 and 42AD and 42AE. These instruments can only be granted by the chief executive with the consent of the indigenous landholder, or by the indigenous landholder with the consent of the chief executive, or by both jointly. In all other respects, these new sections mirror the generic provisions.

45 Amendment of s 111 (Management plans)

Clause 45 amends paragraph 111(1)(b) to include the declaration of an indigenous joint management area in the list of events after which the Minister must, as soon as practicable, prepare a management plan for the area. This clause also amends subsection 111(8) to ensure that the management plan is prepared jointly with the indigenous landholder, and is consistent with any indigenous land use agreement and indigenous management agreement for the protected area.

46 Amendment of s 120 (Implementation of approved plan)

Clause 46 amends section 120 to require that the chief executive and the indigenous landholder must give effect to the management plan for the indigenous joint management area.

47 Amendment of sch (Dictionary)

Clause 47 amends the dictionary in the Schedule to include terms not previously used in the NCA. It inserts definitions for the terms: *indigenous joint management area* meaning an area declared under the NCA as an

indigenous joint management area; *indigenous landholder* meaning the trustee for the protected area or land, so that the same meaning is applied as in the *Aboriginal Land Act 1991* or *Torres Strait Islander Land Act 1991*; *North Stradbroke Island Region* by reference to the *North Stradbroke Island Protection and Sustainability Act 2011*; and *prescribed protected area* meaning (a) a national park (scientific); (b) a national park; (c) a national park (recovery); (d) a conservation park; or (e) a resources reserve.

Division 3 Amendment of Sustainable Planning Act 2009

48 Act amended

Clause 48 provides that this division amends the *Sustainable Planning Act 2009*.

49 Amendment of sch 1 (Prohibited development)

Clause 49 amends Schedule 1 of the *Sustainable Planning Act 2009*, inserting a provision effectively prohibiting development applications for environmentally relevant activities under the *Environmental Protection Regulation 2008*, schedule 2, part 4, section 16 (that is, quarrying or dredging) in the NSI Region involving over 10,000 tonnes of material a year. This threshold is intended to allow small pits for local road maintenance and construction activities, but prevent larger operations that would have similar environmental impacts as sand mining. Existing approvals will not be affected by this amendment.

50 Amendment of sch 3 (Dictionary)

Clause 50 amends the dictionary in schedule 3 of the *Sustainable Planning Act 2009* to define *North Stradbroke Island Region* by reference to section 5 of the *North Stradbroke Island Protection and Sustainability Act 2011*.

Schedule 1 Conditions of renewal for particular mining leases

Schedule 1 specifies conditions for the renewal of particular mining leases in the NSI Region as provided for in clause 11. Clause 11 of the Bill

provides for the renewal of particular NSI mining interests for a particular term. Upon commencement, each mining interest listed in schedule 1, column 1 is taken to have been renewed under the *Mineral Resources Act 1989*. Schedule 1, column 2 identifies the term of renewal for each mining interest identified in column 1. Schedule 1, column 3 specifies the conditions for renewal of each mining interest. The application of the conditions in column 3 does not have the effect of creating a right in connection with the mining lease that was not created in connection with the initial granting of the mining lease.

Schedule 2 Variation of conditions of particular mining leases

Schedule 2 specifies conditions for the extension of the term for particular mining leases as provided for in clause 12. Clause 12 provides for the extension of the term of certain leases that would have otherwise expired and are necessary for mining. Upon commencement the term for each mining lease listed in schedule 2, column 1 is taken to have been extended under the *Mineral Resources Act 1989*. The term of the mining lease is extended to the day that is stated opposite the mining interest in schedule 2 column 2. Schedule 2, column 3 specifies conditions that upon commencement are taken to apply to the relevant mining lease. The conditions specified in column 3 do not have the effect of creating a right in connection with the mining lease that was not created in connection with the initial granting of the mining lease.

Schedule 3 Dictionary

Schedule 3, pursuant to clause 4, defines terms used in the Bill including *commencement*, *environmental authority*, *Environmental Protection Act*, *Mineral Resources Act*, *mining interest*, *mining lease*, *North Stradbroke Island Region*, and *NSI mining interest*.