

North Stradbroke Island Protection and Sustainability and Another Act Amendment Bill 2013

Explanatory Notes

Short title

The short title of the Bill is the North Stradbroke Island Protection and Sustainability and Another Act Amendment Bill 2013.

Policy objectives and the reasons for them

The objectives of the Bill are to amend:

1. The *North Stradbroke Island Protection and Sustainability Act 2011* (NSIPS Act) to:
 - a. enable Sibelco to seek a renewal of mining leases in 2019 at the Enterprise mine until 2035, thereby providing a realistic timeframe in which North Stradbroke Island (NSI) can transition to other industries such as nature based recreation, tourism and education;
 - b. remove the restricted mine path and non-winning condition over part of the Enterprise mine and consequently replace the environmental authority. This will reduce the harm done to Queensland's reputation in relation to sovereign risk and leave environmental matters to the *Environmental Protection Act 1994* (Qld) (EP Act); and
 - c. provide for an opportunity to renew mining leases associated with Yarraman mine and Enterprise mine, until 2020 and 2040 respectively with a non-winning condition for the last 5 years. This will provide the necessary mechanism to allow for rehabilitation of the mine sites.
2. The *Vegetation Management Framework Amendment Act 2013* to remove the requirement for an applicant for vegetation clearing to provide a significant beneficial impact (SBI), for example revegetation of a watercourse or erosion control, and to demonstrate how the applicant will minimise and mitigate the effects of the proposed clearing.

The amendments will remove sections which would have unintended consequences, and will remove duplication with provisions proposed within the State Development Assessment Provisions (SDAP) Module 8: Native vegetation clearing to support the *Vegetation Management Framework Amendment Act 2013*.

North Stradbroke Island Protection and Sustainability Act 2011

Background

North Stradbroke Island is the second largest sand island in the world. It is situated off the coast of South East Queensland, approximately 40 kilometres from Brisbane.

Sand mining on NSI began in 1949. In 1966 Consolidated Rutile Limited (CRL) commenced mining operations on the island. Sibelco Australia Limited (Sibelco) purchased CRL in 2009 (noting that Sibelco was called Unimin at the time of purchase). Unimin changed its name to Sibelco in 2011 and is now the only sand mining company operating on the Island. All mining leases held by Stradbroke Rutile Pty Ltd are owned by Sibelco.

For many years, there has been public discussion and debate about the interconnected issues of mining, Aboriginal land rights and the environment on NSI.

In March 2011, the former Queensland Government introduced the NSIPS Act to phase-out mining and transition the economy of NSI towards nature based recreation, tourism and education. It also facilitated the staged creation of National Park to be jointly managed by the State and the traditional owners of the island, the Quandamooka People.

The Act provides for the phase-out of mining, specifically that:

- mining interests for Yarraman mine (ML1109) would end in 2015;
- the Enterprise mine (ML1105, ML1117 and ML 1120) would cease operating in 2019; and
- all mining would cease on NSI with the closure of the Vance mine (ML 1108, ML1124 and ML7064) in 2025.

The NSIPS Act also imposed a restricted mine path for Sibelco's Enterprise mine. The Explanatory Notes state that this was done in order to ensure that future mining avoids areas of high conservation value as much as possible.

In addition, the NSIPS Act sought to protect and restore the environmental values of the island and facilitate the staged creation of areas to be jointly managed by the State and the traditional owners of the land.

To that end, the then Queensland Government declared new national park over 20 per cent of the land on NSI in 2011, with the stated ultimate goal of 80 per cent of NSI being protected as national park, and jointly managed by the State and the Quandamooka People, who are the recognised native title holders.

The following problems have been identified with the NSIPS Act:

Impact on NSI and the regional economy

The NSIPS Act was part of a package designed to transition the economy of NSI away from mining and towards nature based recreation, tourism and education. However, the economy of NSI was, and still is largely dependent on mining operations. The cessation of mining under the NSIPS Act means that the majority of economic activity on NSI will cease in six

years. The current framework under the NSIPS Act does not provide sufficient time for the economy of NSI to transition to one that is not dependent on mining.

It was originally anticipated, at the introduction of the NSIPS Act, that other industries would be developed and established on NSI before the cessation of the majority of mining by 2019. However, there is currently no alternative economic activity of any comparable size that would be capable of generating a similar monetary injection or replacement for the current mining operations.

The government made an election commitment to deliver a framework to extend mining on NSI, recognising that the NSIPS Act did not allow sufficient time for the economy of NSI to transition to one which is not dependent on mining.

In addition, the NSIPS Act was passed on the assumption that alternative industries would be established on NSI. However, the proposal that 80 per cent of NSI would become national park presented a significant barrier to the establishment of such alternative industries.

The government recently enacted the *Nature Conservation and Other Legislation Amendment Act 2012*. That Act amended the *Nature Conservation Act 1994* (NCA) to allow for the authorisation of ecotourism facilities in national park, national park (recovery), including indigenous joint management areas, and in national park (Cape York Peninsula Aboriginal land). Under that Act, ‘ecotourism facility’ is defined as a facility with its primary purpose being to facilitate the presentation, appreciation and conservation of the land’s natural condition and cultural resources and values.

Consistent with the government’s commitment to open up national parks and increase access for tourists and the community, the government has also introduced into Parliament the Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013. The amendments in that Bill seek to broaden the object of the NCA to provide for recreation and commercial uses in protected areas, while continuing to retain a focus on nature conservation. The Bill includes the following supplementary outcomes with regard to meeting nature conservation objectives:

- the use and enjoyment of protected areas by the community;
- the involvement of indigenous people in the management of protected areas in which they have an interest; and
- the social, cultural and commercial use of protected areas in a way consistent with the natural, cultural and other values of the areas.

Whilst those amendments will go a long way to assist in the transition of the NSI economy, by providing a legislative basis to facilitate the development of tourism (including ecotourism) operations on NSI, it will still take considerable time to develop the private sector interest and investment to facilitate the development of tourism and eco-tourism on NSI.

Sovereign risk

The legislated end to mining on NSI, introduced by the previous government, materially cut short Sibelco’s proposed mining activities and the resource life potential. Under the current framework, mining is to cease at the Enterprise mine in 2019, the Vance mine in 2025 and the Yarraman mine in 2015.

The restrictions placed on Sibelco, such as denial of access to resource, imposed closure dates and reduced lease area, ignore all market forces that drive investment decisions in mining operations and represented a significant loss to Sibelco. Sibelco is the only miner in Australia to have a mine path dictated by legislation at a point in time instead of generated through an ongoing technical processes of exploration, risk assessment, market review, and mine planning.

The introduction of the NSIPS Act created a sovereign risk issue for the State of Queensland. That is, the precedent of amending legislation to change mining lease conditions is significant and one that has direct implications for investor confidence in exploration and minerals development in Queensland.

Restricted mine path

Under the NSIPS Act, a restricted mine path was legislated for the Enterprise mine. The original Explanatory Notes state that this was done in order to ensure that future mining avoids areas of high conservation value as much as possible.

Aside from contributing to the issue of sovereign risk, as noted above, this creates unnecessary red tape and legislative duplication. Protection of the environment is a matter for the EP Act, an Act which is specifically designed for that purpose. In this regard it is important to note that the environmental assessments originally carried out on Sibelco's mining leases, prior to the 2011 NSIPS Act, were based upon the larger mining area.

Access for rehabilitation

The NSIPS Act did not provide any mechanisms for the mining lease holder to access the mine sites at the end of the mining lease to carry out the necessary rehabilitation.

Vegetation Management Framework Amendment Act 2013

The *Vegetation Management Framework Amendment Act 2013* (VMFAA) was passed by Parliament on 23 May 2013. The purpose of the VMFAA was to reduce red-tape and regulatory burden for landholders, business and government, while also retaining the vegetation management legislation. To achieve this, a range of reforms were made to the vegetation management framework to streamline its operation, and reduce regulatory burden and red-tape.

As part of this reform, the VMFAA introduced several new relevant purposes to the vegetation management framework for clearing of native vegetation including high value agriculture and irrigated high value agriculture.

Sections 22DAB(2)(d) and 22DAB(3) of the VMFAA require applicants to demonstrate how they propose to minimise or mitigate against the adverse impacts of clearing and provide a SBI for the clearing of endangered and of concern regional ecosystems. The SBI provided must be located on the applicant's land. These provisions of the VMFAA have not yet commenced and will do so on a date to be set by proclamation.

The SBI requirement will impact those applicants who are clearing the last remaining vegetation on their land and have fully developed or cultivated their property and therefore have no ability to provide an SBI on their land. This is inconsistent with performance outcomes available across the vegetation management framework for the clearing of

endangered and of concern regional ecosystems. It is proposed that the State Development Assessment Provisions (SDAP) Module 8: Native vegetation clearing will require applicants to provide an offset for the impacts of clearing endangered and of concern regional ecosystems or a SBI delivered within the landscape. The SDAP will also require applicants to demonstrate how they will minimise or mitigate against the adverse impacts of clearing.

The Vegetation Management Reforms Industry Working Group identified that the VMFAA presented unintended consequences that will significantly constrain the opportunity for landholders to participate in the high value agriculture and irrigated high value agriculture reforms and duplicate the requirements of the SDAP.

Achievement of policy objectives

North Stradbroke Island Protection and Sustainability Act 2011

Impact on NSI and the regional economy

This Bill provides an appropriate legal framework to allow for the continuation of mining on NSI until 2035 and to return the holder of the mining leases to a position similar to that held prior to the introduction of the NSIPS Act.

As part of that framework the Bill will also enable the mining lease holder to apply to renew mining leases for the Enterprise mine until 2035. This will honour the government's election commitment to provide a more realistic timeframe in which to transition the NSI economy to alternative industries.

Sovereign risk

The proposed amendments to the NSIPS Act in this Bill will return the mining lease holder to a position similar to that it would have been in had the NSIPS Act not been introduced and will go some way to restoring Queensland's reputation for minimal sovereign risk. The amendments will:

- enable Sibelco to apply to renew mining leases for the Enterprise mine until 2035; and
- remove the restricted mine path and non-winning condition at the Enterprise mine.

Restricted mine path

The Bill removes the restricted mine path for the Enterprise mine as well as replacing the Environmental Authority (EA). The EA will be attached as a Schedule under the amended NSIPS Act and will operate and be administered under the EP Act.

Access for rehabilitation

The Bill will provide an opportunity to renew mining leases associated with Yarraman mine and Enterprise mine for a period of five years after mining ceases, that is until 2020 and 2040 respectively, with a non-winning condition during this five year period. This will provide the necessary mechanism to allow for rehabilitation of the mine sites. It is unnecessary to make amendments in relation to the Vance mine because there will be sufficient time remaining on

the existing mining lease after mining ceases in which to carry out the necessary rehabilitation.

Vegetation Management Framework Amendment Act 2013

The Bill will amend the VMFAA to remove the requirement for an applicant to provide an SBI, and to demonstrate how the applicant will minimise and mitigate the effects of the proposed clearing. . These provisions have unintended consequences and are a duplication of provisions proposed within the SDAP.

In particular, the omission of sections 22DAB(2)(d), 22DAB(3), 22DAC(1)(e) and 22DAC(1)(i) will offer the applicant greater flexibility to either provide a SBI or an offset as per the requirements of the SDAP. This will ensure that all performance outcomes for clearing for high value agriculture and irrigated high value agriculture will be assessed consistently with other clearing activities and not duplicated by other statutory provisions.

Alternative ways of achieving policy objectives

North Stradbroke Island Protection and Sustainability Act 2011

There are no alternative ways to achieve the objectives of the Bill.

The government made a commitment to deliver a framework to extend mining on NSI to provide more time for the island's economy to transition away from dependence on sand mining. This extension can only be achieved by amending the NSIPS Act.

The framework under the NSIPS Act to cease most mining activities on NSI by the end of 2019, and to end all mining within the North Stradbroke Island Region by 2025, does not provide sufficient time for the economy of NSI to transition to an economy that is not dependent on mining. There is currently no alternative economic input of any size that would be capable of generating a replacement for mining operations within the next six years.

There would be significant direct impacts from the cessation of mining on NSI in 2019, in addition to significant flow-on and indirect impacts on other NSI businesses and industries. Sand mining currently accounts for approximately 14 per cent of total employment on NSI, with a smaller percentage of total employment on the mainland. Around 15 per cent of Sibelco's workforce is Indigenous.

The cessation of mining would have significant impacts on employment and incomes. The significant reduction in employment would also have serious implications for the community of the island such as de-population which will affect community activities and social networks including for example, a reduction in the demand for schooling from children in mining families.

The early cessation of mining may also affect the demand for ferry transport services. Electricity prices may increase as Sibelco is currently funding a large portion of the island's electricity transmission network costs and fuel prices may rise as the mining industry on NSI accounts for a significant portion of the demand for fuel.

The abovementioned impacts cannot be offset until there is growth in other industries on NSI. As such, the extension of mining on NSI to 2035 will provide more time for the growth of alternative industries which will offset the negative impacts from the cessation of mining. The growth of alternative industries under the timing of the current framework is likely to be much less than would be required to offset the impacts from the cessation of mining in 2019.

The imposition of legislative end dates for mining activity in the NSIPS Act also created an issue around sovereign risk. The imposition of an artificial end date on a mining operation ignores all of the market forces that drive mine closure or investment decisions for mining operators and introduces a set of artificial constraints that may drive mines towards reduced profitability and inefficient mining practices. This has compromised Sibelco's ambitions for mining on NSI as the prescribed dates for the end to mining substantially cut short their proposed mining activities and the resource life potential.

To address the abovementioned issues created by the introduction of the NSIPS Act, amending the Act to extend the current prescribed end dates for mining will provide a longer transition period to an economy that is not dependent on mining, and will also reduce the appearance of sovereign risk by returning Sibelco closer to its original position.

In essence, extending sand mining on NSI is the only option available to the government in order to provide a realistic timeframe for other industries to develop on NSI before sand mining ends. The extension of mining until 2035 is considered an appropriate timeframe as it provides more time for alternative industries on NSI to generate enough economic activity to equal that of mining.

The government is making every effort to limit the environmental impacts of the proposal by only extending mining on certain leases comprising the Enterprise mine. Mining will be concentrated at the existing mine site, mostly on already disturbed land and in areas of low ecological significance. Mining will not occur in areas currently declared Indigenous Joint Management areas.

This option does not disadvantage the Quandamooka People. The legislative amendments will be done in accordance with the requirements of the *Native Title Act 1993* (Cwlth), including the payment of compensation for future acts, and will be done without requiring amendment to the current Indigenous Land Use Agreement (ILUA) between the State and the Quandamooka People. The State is committed to fulfilling its obligations under the ILUA.

The government considers that the negative impacts of ceasing mining under the current framework by 2019 far outweigh the potential impacts from the extension of mining on NSI until 2035. The impacts from the cessation of mining under the current framework would be permanent unless another industry moves in to take the place of sand mining in the next six years.

Vegetation Management Framework Amendment Act 2013

There is no alternate way to achieve the policy objectives because they can only be achieved by amendment the VFMAA.

Estimated cost for government implementation

North Stradbroke Island Protection and Sustainability Act 2011

The implementation of the Bill will have no significant costs for government.

There may be some administrative cost in inspection or compliance due to the extension of mining until 2035. Any costs associated with the implementation of the Bill will be met from within existing departmental sources.

Vegetation Management Framework Amendment Act 2013

There are no costs to government relating to the implementation of these amendments.

Consistency with fundamental legislative principles

The Bill has been drafted with regard to fundamental legislative principles (FLPs) as defined in Section 4 of the *Legislative Standards Act 1992* and is generally consistent with these provisions. However, the Bill does include several provisions that may be regarded as departures from FLPs. Clauses of the Bill in which FLP issues arise, together with the justification for any departure, are outlined below.

Whether legislation has sufficient regard to rights and liberties of individuals - *Legislative Standards Act 1992 s 4(3)*

Clause 12 of the Bill inserts a replacement section 17 into the NSIPS Act which replaces the EA, and which applies to the majority of sand mining on NSI. The amendments replace the existing EA with a new EA which is a schedule to the Bill. Making a replacement EA by means of a schedule to the NSIPS Act means that the replacement EA will not attract the public notification requirements under the EP Act. Arguably this is a breach of section 4(3) of the *Legislative Standards Act 1992*, which provides that legislation should have sufficient regard to rights and liberties of individuals.

Whilst the EA as a whole is being replaced, this has been done to contemporise the EA by removing redundant provisions and including current model conditions that were introduced as a result of green tape reforms in 2012. These matters are not of sufficient magnitude to necessitate a public consultation process.

The substantive change in the new EA relates to amended conditions as a result of the removal of the restricted mine path at the Enterprise Mine. Whilst this is a significant issue, this potential breach is justified on the basis that the environmental assessments originally carried out were based upon the larger mining area the company had prior to the NSIPS Act requiring changes to the EA.

In addition, inclusion of the entire EA as a schedule to the Bill, is a transparent way of making the EA. It will be open to the public to make comment on it during the Parliamentary Committee inquiry into the Bill and is subject to scrutiny by members of Parliament during debate on the Bill.

Whether legislation ensures that the rights and liberties, or obligations, should be dependent on administrative power only if the power is sufficiently defined and subject to appropriate review - *Legislative Standards Act 1992 s 4(3)(a)*

Clause 9 of the Bill inserts a new section 11F into the NSIPS Act that provides that no appeal, including judicial review can be made against the decision of the Minister to renew certain mining leases under the NSIPS Act.

It is arguable that the removal of appeal rights is in breach of section 4(3)(a) of the *Legislative Standards Act 1992*, which provides that rights and liberties, or obligations, should be dependent on administrative power only if the power is sufficiently defined and subject to appropriate review. However, the amendments are justified by the need to balance the rights of an individual against the needs of the NSI community and region as a whole. The early cessation of mining on NSI will have a severe effect on NSI and regional economies. To ensure that does not occur it is essential to provide Sibelco with sufficient certainty now to provide the necessary investment in infrastructure to continue mining at the Enterprise mine until 2035, with non-winning conditions applied from 2035 to 2040, to finalise rehabilitation of mine sites.

Whether legislation has sufficient regard to Aboriginal tradition and Island custom - *Legislative Standards Act 1992 s 4(3)(j)*

The government is satisfied that the Bill does not breach the *Native Title Act 1993 (Cwlth)* or the ILUA between the State and the Quandamooka People. In addition, nothing in the Bill seeks to remove the obligation to pay compensation to the Quandamooka People where the provisions of the Bill trigger a right to compensation under the *Native Title Act 1993 (Cwlth)*.

Whether legislation has sufficient regard to the right to ecologically sustainable development - *Legislative Standards Act 1992 s 4(2)*

The Bill will enable mining to continue at the Enterprise mine until 2035 and will remove the restricted mine path from that mine. It is arguable that the extension of mining may have an impact on an individual's right to ecologically sustainable development.

The government still supports ecological development on NSI. However, it is vital to ensure that this is not done to the detriment of the NSI and regional economies. The reason that mining is being extended at the Enterprise mine is that there will not be sufficient alternative development to support the NSI economy until 2035.

In addition, the underlying land tenure of the mining leases is unallocated State land. The State has not been informed of any proposals to use any of the current mining leases. Nor has the State received any requests for a future grant of land underlying the leases by individuals or the native title holders.

Consultation

North Stradbroke Island Protection and Sustainability Act 2011

No public consultation has occurred on the Bill. However, during the election campaign in 2012, the then Opposition Leader, gave a commitment that if elected his government would -

Deliver a framework for an orderly ending of the mining leases on North Stradbroke Island, which requires the mining company to remediate to the highest environmental standards and allows the Island proper time to transition to a new economy.

The government is now honouring this commitment by the introduction of this Bill.

The Bill will not impact the ILUA between the State and the Quandamooka People. The Bill ensures the long term economic viability of NSI by allowing more time for NSI to develop alternative industries.

Vegetation Management Framework Amendment Act 2013

The amendments are of a minor and technical nature and accordingly there has not been any public consultation.

Consistency with legislation of other jurisdictions

North Stradbroke Island Protection and Sustainability Act 2011

The NSIPS Act is unique in that its objective is to substantially end mining within the NSI Region by 2025. This Bill addresses policy objectives specific to NSI and is not intended to be uniform with or complementary to Commonwealth or other State or Territory legislation.

Vegetation Management Framework Amendment Act 2013

The Bill addresses issues specific to the Queensland Vegetation Management framework and is not intended to be uniform or complementary to Commonwealth or other State or Territory legislation.

Notes on provision

Part 1 Preliminary

Short title

Clause 1 states that, when enacted, the Bill will be cited as the *North Stradbroke Island Protection and Sustainability and Another Act Amendment Act 2013*.

Commencement

Clause 2 provides for the Act, other than part 3, to commence by proclamation.

Part 2 Amendment of the North Stradbroke Island Protection and Sustainability Act 2011

Act amended

Clause 3 provides that the Bill amends the *North Stradbroke Island Protection and Sustainability Act 2011*.

Amendment of s 2 (Object of Act)

Clause 4 amends the objects of the Act to provide for the limited extension of mining activities in the North Stradbroke Island Region to 2035 and to allow for rehabilitation of land in the region to happen until the end of 2040.

Additionally this amendment provides that the purpose of the management of the duration of mining interests is to assist the NSI economy to transition from dependence on mining activities.

Amendment of s 5 (Meaning of North Stradbroke Island Region)

Clause 5 amends the editor's note in subsection 5(1) to reflect the fact that the map of the North Stradbroke Island Region is now available on the website of the Department of Natural Resources and Mines. Previously it was available on the website of the former Department of Environment and Heritage Protection.

Amendment of s 9 (Termination of mining lease 1109)

Clause 6 amends section 9 to allow for the renewal of mining lease 1109 under new sections 11C to 11E on application by the holder of the mining lease.

The application for renewal of mining lease 1109 may only be made under the NSIPS Act, particularly as detailed in new section 11C. The prohibition on an application for renewal under the *Mineral Resources Act 1989* (MRA) remains.

Because mining operations continue until the time of the expiry of the lease, without renewal of the lease for an additional period, there will be no authority under which access to the lease for rehabilitation can occur. Any renewal of the lease will be subject to a condition prohibiting the winning of minerals from the lease area pursuant to section 11E.

Amendment of s 10 (Particular NSI mining interests not to be renewed)

Clause 7 amends section 10(3) to make it clear that the prohibition on renewals of relevant NSI mining interests under the MRA is subject to the new section 11B (Mining leases 1105, 1109, 1117 and 1120 can be renewed) for mining lease 1105. The clause also makes a minor editorial correction.

Amendment of s 11 (Renewal of particular NSI mining leases)

Clause 8 inserts a note in section 11(2)(b)(i) referring to new section 11A in relation to mining lease 1120. Mining lease 1120 forms part of the Enterprise mine.

Upon commencement of the NSIPS Act, section 11 renewed a number of leases and imposed conditions on those leases. At that time, mining lease 1120 was renewed and was subject to a condition prohibiting the winning of minerals. New section 11A removes that condition, allowing mining activities to be undertaken, including the extraction of materials, at Enterprise mine upon mining lease 1120.

Clause 8 also inserts a note in section 11(5) referring to new section 11B in relation to mining lease 1117 and mining lease 1120.

Section 11(5) prohibits the renewal of certain leases at the end of their term under the MRA. Whilst this prohibition is continued, new section 11B allows for the renewal of mining leases 1117 and 1120 under the NSIPS Act.

Insertion of new ss 11A –11J

Clause 9 inserts new sections 11A to 11J.

New section 11A – Mining lease 1120 no longer subject to particular condition for renewal

New section 11A removes the condition imposed upon mining lease 1120 which prohibited the winning of minerals within the mining lease area. This condition formed part of the limitations placed upon mining at Enterprise mine.

New section 11A prevails despite the imposition of the condition in section 11(2)(b)(i) or any provision of the MRA applicable to that condition.

New section 11B – Mining leases 1105, 1109, 1117 and 1120 can be renewed

New section 11B provides for the renewal of mining leases 1105, 1109, 1117 and 1120 under the NSIPS Act. An application may be made by the mining lease holder to the Minister administering the NSIPS Act for the renewal. The application requirements are detailed in new section 11C.

New section 11B prevails despite sections 10(2) and (3), which would otherwise prevent renewal and prevent any application for renewal under the MRA of mining lease 1105, and sections 11(5) and (6), which would otherwise prevent renewal of mining leases 1105, 1117 and 1120 and prevent any application for renewal under the MRA in relation to those leases.

The mining leases are able to be renewed pursuant to the process in the NSIPS Act, not the MRA. Provisions in the MRA that apply to renewal, such as sections 279 and 286, do not apply. New section 11B puts beyond doubt that it prevails to the extent there is anything to the contrary in the MRA that applies to the condition.

Requiring an application from the mining lease holder provides an opportunity for the holder to consider whether renewal is appropriate or necessary with regard to its available resources and other commercial considerations.

The mining leases may be the subject of more than one renewal.

New section 11C – Application for renewal of mining leases

New section 11C entitles the holder of mining lease 1105, 1109, 1117 or 1120 to apply to the Minister administering the NSIPS Act for renewal of the mining lease. The application must be made within the renewal period, which is specified as at least 6 months prior to expiry of the lease but not more than 1 year before expiry. In a particular case the Minister may allow a shorter period for the making of the application. More than one application for renewal of a mining lease may be made.

New section 11C provides that the application must be made in the approved form, accompanied by the fee prescribed under a regulation and include a statement about:

- the term sought for the renewal; and
- in relation to the land – a description of the relevant parcels; the current use of the land; the name and address of the owners of the land and the name and address of the owners of land used for access.

The effect of this clause is that renewal of a lease does not occur automatically and is predicated upon the making of a properly made application. Additionally under new section 11D the Minister has discretion to decide appropriate conditions.

New section 11D – Decision on application

New section 11D requires the Minister to renew the mining lease 1105, 1109, 1117 or 1120 if a properly made application has been made.

A lease renewed under new section 11D is subject to the conditions provided in new section 11E, any conditions prescribed by regulation under this Act and any conditions decided by the Minister.

After granting the application, the Minister must provide the holder of the mining lease a written notice stating the date the renewed lease starts and any conditions decided by the Minister.

New section 11E – Provisions about particular leases if renewed

New section 11E provides that in the event of the renewal of mining lease 1109 it is subject to a condition that prohibits winning of minerals from the mining lease. This is because the renewal of mining lease 1109 is designed to facilitate rehabilitation, not mining.

A renewed mining lease 1109 expires by operation of this section on 31 December 2020.

New Section 11E also imposes conditions on renewed mining lease 1105, 1117 or 1120. These leases may be subject to renewal more than once but if, because of renewal, the lease ends after 31 December 2035, they are subject to the following conditions:

- the winning of minerals may occur on the mining lease until the end of 2035;
- after 31 December 2035 the winning of a mineral from the place where it occurs in the area of land over which the lease is granted ceases to be an ‘authorised activity’ and as such is not permitted. This is because it is intended that any activity after 2035 be limited to that necessary for the rehabilitation of the land; and
- the mining lease expires by operation of this section on 31 December 2040.

The term of any renewed lease cannot extend past 31 December 2040.

New section 11F – Limitation of review and appeal

New section 11F excludes any challenge, appeal, or review of the decision of the Minister to grant a renewal, or the conditions attached to that renewal under new section 11D.

This new section recognises the continued availability of review on the grounds of jurisdictional error. As decided by the High Court in *Kirk v Industrial Relations Commission of NSW & WorkCover NSW [2010] HCA 1*, this type of review cannot be removed for constitutional reasons.

The reasons for the inclusion of this provision are set out under the heading Consistency with Fundamental Principles.

New section 11G – Continuation of lease while application being dealt with

New section 11G provides for the continuation of a mining lease while a properly made application for renewal of that mining lease under this Act is being dealt with.

Where that mining lease would expire on its terms and the holder continues to pay rental on the lease and comply with the requirements of the MRA and the lease conditions the lease continues. The continued lease remains subject to the rights, entitlements and obligations that applied before the lease expired until the application is withdrawn or granted.

New section 11H – When term of renewed lease starts

New section 11H provides for determining the commencement of the term of a renewed lease.

New section 11I – When new conditions of renewed lease start

New section 11I deals with new conditions applicable to a renewed lease. Any new conditions apply from the later of:

- the start of the term of the renewed lease;
- the day the renewal is granted.

New section 11I also provides for the continuation of the obligation to pay rent where a lease is continued under new section 11G.

New section 11J – Application of Mineral Resources Act not limited

New section 11J clarifies that the renewal of a mining lease under new section 11D does not limit the application of the MRA to the renewed mining lease despite the renewal of the lease occurring under this Act.

Amendment of s 14 (Prohibition on grant of NSI mining interest)

Clause 10 inserts an additional subsection into section 14 to clarify that the prohibition on the grant of a NSI mining interest does not include the grant of a renewal of a mining lease under new section 11D.

Amendment of s 15 (Purpose of div 3)

Clause 11 amends section 15 to identify that the purpose of the division is to provide for the replacement and further amendment of a particular environmental authority for mining on NSI.

Replacement of ss 16 to 21

Clause 12 omits sections 16 to 21 and inserts a new section 17 (Replacement of environmental authority MIN100971509).

The clause replaces the existing environmental authority with the new environmental authority inserted in Schedule 2A. The new environmental authority provides for increased protection for the environment surrounding Enterprise mine including:

- appropriate buffer zones to protect some environmentally sensitive areas;
- identification of areas in which disturbance can occur;
- requirements for a management plan;
- conditions to protect surrounding environmental values;
- requirements for an environmental monitoring program; and
- notifications of emergencies and incidents.

This amendment clarifies that the replacement of the existing environmental authority with the new environmental authority by this provision does not in any way limit the application of the EP Act.

The replacement of the existing environmental authority with the new environmental authority renders sections 16 to 21 redundant.

Insertion of new ss 23 and 24

Clause 13 inserts new sections 23 and 24.

New Section 23 – Approved forms

New section 23 provides the chief executive administering the NSIPS Act power to approve forms under this Act. For example, the chief executive may approve a form for an application for renewal of a mining lease.

New section 24 – Regulation-making power

New section 24 provides for the Governor in Council to make regulations under this Act in relation to the fees to be paid under the Act and the conditions which may be imposed for the renewal of a mining lease under section 11D.

Insertion of new sch 2A

Clause 14 inserts the new environmental authority for mining activities on NSI into Schedule 2A of the Act.

Amendment of sch 3 (Dictionary)

Clause 15 omits the definition of ‘environmental authority’. This definition is redundant due to new section 17.

Part 3 Amendment of the Vegetation Management Framework Amendment Act 2013

Act amended

Clause 16 provides that this part amends the *Vegetation Management Framework Amendment Act 2013*.

Amendment of s 47 (Insertion of new pt 2, div 6, sdiv 1A)

Clause 17 amends section 47 of the VMFAA to omit the following new sections of the *Vegetation Management Act 1999*:

- new section 22DAB(2)(d) which provides requirements for applicants to provide details of how they propose to minimise or mitigate against the adverse impacts of clearing as part of the suitable application test. The SDAP performance outcomes require the applicant to provide this information. The omission of the section will reduce duplication of the information the applicant is required to provide new section

22DAB(3) which requires applicants to provide an SBI on the biodiversity values of the land when clearing endangered and of concern regional ecosystems as part of the suitable application test. The SDAP performance outcomes require the applicant to provide either a SBI or an offset. The omission of this section will reduce the regulatory burden of applicants and ensure that the impacts of clearing of endangered and of concern regional ecosystems are assessed under the SDAP consistent with other assessable development involving vegetation clearing;

- new section 22DAC (1)(e) which requires the chief executive to consider how the applicant proposes to minimise or mitigate against the adverse impacts of clearing as part of the suitable application test. The SDAP performance outcomes require the applicant to provide this information. The omission of the section will reduce duplication of the information the applicant is required to provide; and
- new section 22DAC (1)(i) which requires the chief executive to consider the provision significant beneficial impact as part of the suitable application test. The SDAP performance outcomes require the applicant to provide either a SBI or an offset. The omission of this section will reduce the regulatory burden of applicants and ensure that the impacts of clearing of endangered and of concern regional ecosystems are assessed under the SDAP consistent with other assessable development involving vegetation clearing.

The clause also renumbers the new sections of the *Vegetation Management Act 1999* being inserted by section 47 to reflect the above omissions.