

Stradbroke Island Management Organisation



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

Hon K J Jones MP  
Ashgrove Central  
221 Waterworks Road

4 April 2011

Dear Hon Jones MP,

The *North Stradbroke Island Protection and Sustainability Bill 2011* is a misnomer. A more accurate title would be the *North Stradbroke Island Extension of Expired Leases (to allow more Mining before Declaration of National Park) Bill 2011*.

Before the 2009 state election, the Premier told voters that the Bligh government recognised the need to protect and preserve the island for future generations. The Bill reflects the opposite view. It ignores scientific opinions, including from Associate Professor Carla Catterall that further mining on the island created a "greater risk that the island's ecological values will be irreversibly degraded". (**see attached**).

Apply existing laws – legislating around the current rules is fundamentally flawed

The critical importance of ML1117 is now recognised in the Explanatory Notes to the Bill. If the Bligh government wishes to protect the island, all it need do is apply the existing Mineral Resources Act (MRA) expired lease provisions to ML1117 (expired 31/10/07). This would result in the end of mining at the giant Enterprise mine.

The Minister should also apply the cancellation provisions of the MRA to ML1108 at the Vance lease. In July, 2010 the Queensland Court of Appeal ruled to the effect that Unimin Australia Limited (now called Sibelco) had unlawfully removed and sold substantial quantities of non-mineral sand over a decade. This involved breaching the terms of the lease.

The proper application of the MRA would see the early closure of Enterprise and Vance mines and mining ending on the Island when Yarraman closes in 2015. As the

explanatory notes to the Bill recognise, rehabilitation of all three mines would still be required. This would involve the employment of significant numbers of residents for a period of at least five years ie. at least until 2020 – a reasonable transition period.

We agree with the Courier-Mail commentator who said last week that when the government introduces new legislation to bypass existing legislation, “someone is getting duded.” However we disagree with his conclusion that it is Sibelco/ Unimin. For a detailed argument as to why, **see attached**.

#### Despite the spin, there is no balance in this Bill

The government claims that the bill strikes a balance, but where is the balance? The mining company started the exercise with three mines. It ends with three mines. The bill extends all significant leases, including ML 1117 (Enterprise) 1124 and 7064 (Vance). This results in the Enterprise mine being permitted to continue until 2019 and the Vance silica mine until 2025. Yarraman continues until 2015 -when it runs out of minerals. The result is that the mining company ends up with a score of at least 2 1/2 out of 3 -more than 80% of what it started with. Where is the balance ?

As can be seen in the **attached** map, the Island has three mines - two mineral sand mines, Enterprise and Yarraman and one silica sand mine, Vance. We comment further as follows:-

#### Enterprise Mine – key lease ML 1117 extended to allow mining until 2019.

In May 2009, Consolidated Rutile Limited, a public company which then owned Enterprise and Yarraman mines, told the Australian Securities Exchange that, if permitted to continue, Enterprise would run out of minerals by 2027 - perhaps as early as 2023, if a second dredge were to be used (the letter may be viewed at [savestraddie.com](http://savestraddie.com) – library section). As a public company with Australian shareholders, CRL had duties to report honestly to shareholders and to the ASX.

If the expired lease provisions of the MRA were to be genuinely applied, Enterprise mine could not continue because the minister could not be genuinely satisfied of an essential factor – that further mining would be an appropriate use of land which the government intends to declare National Park by 2021.

To circumvent the inevitable result of the non-renewal of ML 1117 under the existing law, the government, by decree, intends to renew it (see clause 11(3) of the bill ).

In our view this represents a serious flouting of the rule of law. The scale of this flouting is unprecedented in terms of environmental impact. The by-passing of the existing legislation has only one purpose – to help out the mining company at the expense of the environment. Sibelco still complains despite the government bending over backwards for it!

The Bill purports to restrict the mine path of Enterprise (cl.17) However, many believe that this restricted mine path (depicted in the map NSI 2) is likely to be substantially increased by the Minister (or on review by the Courts) as a result of the vagueness and unrestricted nature of clause 19. The criteria for increase of mine path area under cl. 19 are primarily in the hands of the mining company and the Minister's hands are tied.

Further, the rationale for the mine path currently depicted in NSI 2 is that some of it has been mined before. It is not revealed that this was in the 1960's and was relatively small-scale dry mining. The mining now occurring is by dredge and up to 100 metres deep, which completely destroys the dune structures and puts at risk the Island's aquifer. The rationale also ignores the scientific opinion of Assoc Professor Carla Catterall and the conservative approach of the precautionary principle.

Vance mine – two key leases extended to allow mining until 2025.

Unimin Australia Limited bought this silica sand mine in 2001 from ACI. In July 2010 the Queensland Court of Appeal ruled Unimin's removal and sale of non-mineral sand over the previous decade was not authorised and therefore unlawful. The court ruled that it did not matter that Unimin had paid some royalties. Despite claims to the contrary, Unimin did not seek leave to appeal to the High Court against this decision. Unimin is facing three criminal charges in the Brisbane magistrates Court alleging lack of permits (to be heard in June) but the Premier has been provided with a legal opinion that there is a prima facie case against Unimin for stealing and misappropriation or fraud.

This legal opinion is from Mr Peter Callaghan, senior counsel (now counsel assisting at the Floods Inquiry) and Mr Andrew Boe. They had access to a previously concealed independent investigation report handed to the government in February 2009, leaked to our lawyers in late 2010. The report contains evidence from 3 EPA officers to the effect that Unimin engaged in intentional wrongdoing. The Callaghan/ Boe legal opinion has not been treated with the respect it deserves. It is worth noting that the Court of Appeal made its findings in ignorance of the evidence of dishonesty. That evidence was concealed from the court, Unimin claimed in the Supreme Court and Court of Appeal that it was innocent of any intentional wrongdoing. (see **attached** 'The criminal charges' for more information).

Against this background it seems extraordinary that rather than apply the Mineral Resources Act to cancel the Vance leases, the bill extends two of these same leases until 2025. Where is the balance in that? Where is the respect for the rule of law?

Yarraman mine

The CRL letter to the ASX stated that Yarraman runs out of minerals at the end of 2013 and half of the Island's mines workforce would lose their jobs. Unimin/ Sibelco has claimed that the mine will run until 2015. The Bill accepts this. As a result there is no change to the life of this mine.

## Summary and Conclusion

The bill fails to protect North Stradbroke Island from the damage caused by sand mining. Its real intention is to bypass existing laws. The genuine application of the existing provisions of the Mineral Resources Act (MRA) would protect the Island by bringing to a speedy end the giant Enterprise mine and the Vance silica mine.

To bring about that result, the Government need only apply the MRA to two key leases ML 1117 and ML 1108. The Bill could then deal with all of the other matters it presently includes, with appropriate amendments. The explanatory notes acknowledge that Enterprise mine could not continue without ML 1117 being extended. The government should apply the MRA expired lease provisions to this lease and end it. Similarly, the MRA cancellation provision should be applied to cancel the Vance lease ML 1108 for breaches of the lease, following the 2010 decision of the Court of Appeal in *Unimin v State of Queensland* – - <http://archive.sclqld.org.au/qjudgment/2010/QCA10-169.pdf>

The proper application of the MRA would therefore result in mining ending in 2015 when the Yarraman mine closes. According to Unimin/ Sibelco, only about half of the island's mining employees (around 120) live on the island. Many of these could be employed in the rehabilitation which Sibelco is obliged to carry out. There is at least five years rehabilitation work at the three mine sites.

Before logging ended on Fraser Island, it was claimed that hundreds of workers would lose their livelihoods. Despite a generous compensation package only about 60 applied as the others obtained alternative employment. For those who do not wish to be employed in the rehabilitation work on Stradbroke, as we all know there are numerous other job opportunities given the current skill shortage in the mining industry. For example, Unimin/ Sibelco itself has 40 other mine sites in Australasia including 8 in Queensland.

Mining on the island was always going to end by 2027 anyway. There was always going to be some social dislocation, as occurs whenever a mine or other business comes to an end. It makes little sense, in the interests of all Queenslanders, to delay the inevitable by extending expired mining leases to facilitate further damage to the island. This is not a balanced approach. It puts short-term destructive jobs ahead of future long-term sustainable jobs.

These future jobs and the integrity of the National Park depend upon the island's environment being protected and preserved. Subjecting the Island to further damage for another 15 years is irresponsible and will be condemned by current and future generations of Queenslanders. It is also an insult to the majority of the families who are claimants in the Island's Native Title proceedings. It is well known that the majority is opposed to more destructive mining of their Island.

The views expressed in this letter concerning the Bill are supported by two other legal opinions from two separate counsel regarding the operation of the expired lease provisions of the Mineral Resources Act. The opinions establish:-

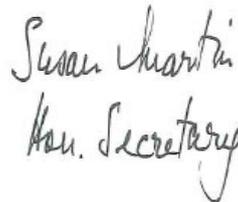
1. There is no such thing as a right to a renewal of an expired mining lease ( the explanatory notes to the Bill concede this);
2. There is no existing power to renew an expired lease unless the minister is satisfied of each of the factors set out in section 286A of the MRA;
3. Mining companies are not entitled to compensation if expired leases are not renewed.

If you would like a copy of these legal opinions, please email your request to [nikki@savestraddie.com](mailto:nikki@savestraddie.com).

Yours sincerely



Sue Ellen Carew  
President  
Friends of Stradbroke Island



Susan Martin  
Hon. Secretary

Susan Martin  
Stradbroke Island Management Organisation

PS In this letter we refer to the Island miner as "Unimin/ Sibelco". Until late last year the company was called Unimin Australia Limited. It changed its name to Sibelco, after its Belgian parent company. It remains a private company owned by the same Belgian family. The name change has not been explained as far as we know.

For more information go to [www.savestraddie.com](http://www.savestraddie.com)

## Ecological Success of Post-mining Rehabilitation

Associate Professor Carla Catterall  
Griffith University

The field of ecosystem restoration is currently in its infancy, something like the state of medical practice in the eighteenth century – attempts are being made which vary in their success, but whose outcomes have not been subject to the kind of scientific scrutiny that is needed in order to be even moderately confident of a successful outcome. Furthermore, even in the most promising of situations, there is an extremely high risk that restoration will fail to produce the hoped-for outcomes within the expected time frame (i.e. within a decade or two). Over longer periods, we simply don't know as the work has not been done.

For example, early revegetation of sand-mined areas in eastern Australia involved the widespread planting of Bitou Bush, which then became a significant weed species invading natural areas along much of the east coast. Thankfully, post-mining practices have improved during the past three decades (for example, they focus on establishing locally native rather than introduced plant species), but they would still fall a long way short of being able to replace the ecosystems that were present before mining.

Restoring an ecosystem requires the reinstatement of the full complement of pre-impact biodiversity. This encompasses both species diversity (including species of plants, worms, insects, birds, mammals, etc.) and the ecological processes which enable these species to persist in the longer

term while maintaining resilience to natural disturbances (such as fire, storms and climate variation). Such processes include dispersal, nutrient cycling, pollination, food-chain maintenance and many others.

A scientific review of past attempts at restoring biodiversity and ecosystems (Hilderbrand *et al.* 2005) concluded that there is a very high risk that restoration projects will fail to achieve their objectives.

Common reasons for this include the following:

**1. The 'field of dreams' fallacy.** For example, it is incorrect to assume that initial success in growing a limited number of plant species will eventually result in colonisation of the area by most of the other desired species (the plants, animals and microbes of the original ecosystem). Many species lack the movement and dispersal capabilities to move to these areas in sufficient numbers for restoration of their populations.

**2. The 'carbon copy' myth.** For example, it is not possible to copy an original ecosystem in situations where the physical properties of an area have changed (e.g. where soil nutrients or hydrological processes have been altered, as is the case in sand mining).

**3. The 'fast forward' myth.** For example, natural forest ecosystems take centuries to redevelop after large-scale disturbance, and there is no proof that restoration actions will be able to significantly accelerate this.

My own research into the use of replanted rainforest sites by birds, reptiles and insects has shown that,

while ecological development looks encouraging in the first decade (with apparently 50% recovery after 10 years), there is substantial risk that many sites may never regain the other 50% of biodiversity, and at best it will require many further decades (see Catterall *et al.* 2008).

In the case of post-mining restoration of natural ecosystems to sand deposits of coastal Southeast Queensland, the failure risk is far higher, due to the unusual soil nutrient requirements of many plant species and the relatively poor ecological understanding of the fauna and flora. If the restored ecosystem only partially resembles the original, there is a further risk that it may lack resilience to fire, storms and climate change.



Rehabilitated ecosystems are much less resilient to disturbance events such as fire (PD)

In mainland regions, where large areas of land are currently degraded as a result of previous land uses, there are various useful attempts currently underway at restoration, and these are likely to produce a net ecological benefit in spite of their uncertainty of full success. However, in areas which currently support important natural or near-natural vegetation, the most likely outcome from removing the vegetation and soil structure, and then attempting to restore them, is a large net loss of ecological value, because this restoration will fall short of the previous natural community.

With respect to North Stradbroke Island in particular, there is currently a spatial mix of substantial areas of intact native habitat with other areas that were previously sand-mined and partially restored. This mix retains the potential to sustain the Island's biodiversity in the longer term: the large intact areas can provide a source of species to progressively recolonise partly-restored areas. However, if the total area of intact vegetation is reduced, together with further mining of other areas, there is a considerably greater risk that the Island's ecological values will be irreversibly degraded over time.

Catterall CP *et al.* 2008. Biodiversity and new forests: Interacting processes, prospects and pitfalls of rainforest regeneration. Pp 510-525 in: Stork N and Turton S (eds.) *Living in a Dynamic Tropical Forest landscape*. Wiley-Blackwell, Oxford.

Hilderbrand RH *et al.* 2003. The myths of restoration ecology. *Ecology and Society* 10: 19.

## **Proposed Legislation a favour for Stradbroke sand miner**

The sand mining lobby has been claiming for the past two weeks that proposed new legislation tramples the sand miner's rights and potentially threatens the rights of all miners. Those claims do not stand up to scrutiny.

The Government, in the Bill before parliament, is proposing to by-pass existing legislation in order to renew expired leases, which by now should have ceased to exist if current legislation had been applied diligently. The extension of expired leases at Enterprise mine is the primary purpose of the bill, not 'protection' of the island from further damage, as the title to the bill deceptively claims.

The existing law applying to expired leases is straightforward. It should have been applied before now. The fact that it hasn't is revealing.

Under the existing law, before the governor-in-council (in effect, the cabinet) has any legal power to renew an expired mining lease, the Minister must be satisfied of each of a number of factors set out in Sec. 286A of the Mineral Resources Act (MRA).

If the minister is not satisfied of even one, there is no legal power to renew the expired lease. In the unique case of Stradbroke Island, there are several factors which the Minister is likely to have difficulty in being satisfied of but one particular factor stands out. The Minister must decide whether:

“having regard to the current and prospective uses of the land comprised in the lease, the operations to be carried on during the renewed term of the lease—

(i) are an appropriate land use;”

National Parks covering Stradbroke Island have been under consideration for at least two decades. Parliament was informed in 1990 that the then environment minister was considering declaring 50 % national park. Since then, the population of the adjacent Greater Brisbane area has more than doubled. In June last year, the Premier identified

areas of proposed national park which encompass all of the expired mining leases and total 80% of the Island.

It is difficult to conceive that the Minister could be satisfied that continuation of mining would be “an appropriate land use” justifying renewal. The sand mining operation is extremely intensive and destructive.

The very purpose of a national park is to be found in the Nature Conservation Act 1992 the object of which Act is “the conservation of nature”. That objective is further emphasised in the definition of what constitutes “the cardinal principle” for the management of national parks that is to:

“provide, to the greatest possible extent, for the permanent preservation of the area’s natural condition and the protection of the area’s cultural resources and values; and ...

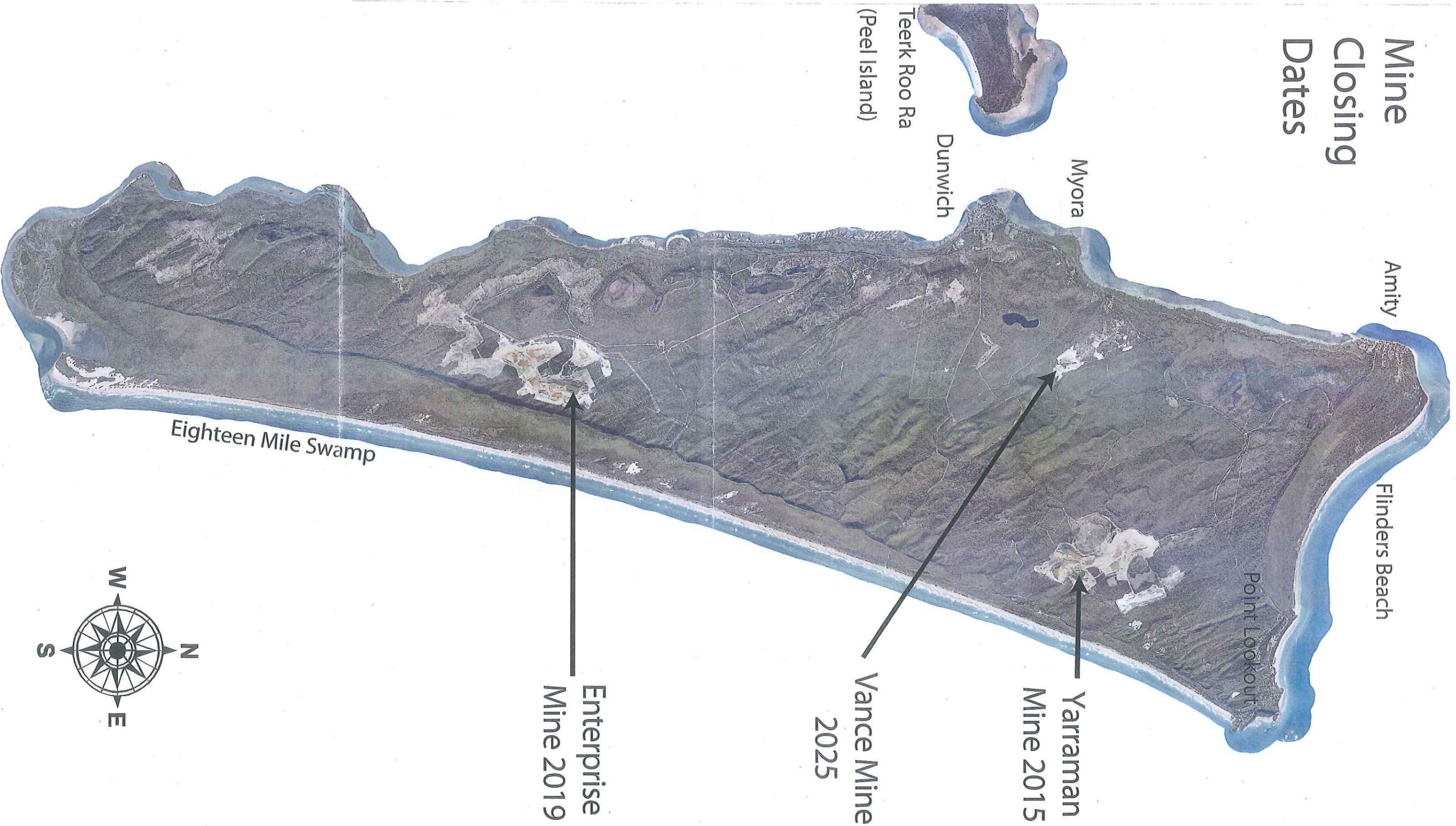
ensure that the only use of the area is nature-based and ecologically sustainable.”

It is also relevant that the present holding company Sibelco (until recently named Unimin Australia Limited) bought out the mining interests of previous owner, Consolidated Rutilite Limited in 2009 – after the term of significant leases had expired. At the time of the takeover, Unimin acknowledged the risks including community opinion concerning the environment and government approval hurdles. It was also aware of an unresolved 1995 native title claim over the Island. The acknowledgements of the risks no doubt also took into account the history of opposition to sand mining on the Island (and on Moreton and Fraser Islands) and the needs of the community of South East Queensland for greater protection of the natural environment for recreational and other purposes. These needs are recognised on the Premier’s website, for example, where it is revealed that SEQ has only 19% public green space compared to Greater Sydney’s 49%. Despite the significant risks, Unimin/Sibelco took a commercial gamble that it would be able to obtain renewals of these expired leases.

It appears its gamble may have paid off. Instead of diligently applying the current law to end mining at the Enterprise mine, resulting in this foreign company bearing the consequences of the commercial risks it took, the government is proposing new

legislation to extend mining at 'Enterprise' for another 9 years. This will result in considerable destruction and the consequential devaluing of the future National Park. It is the people of Queensland who are being 'duded' by this proposed legislation. No amount of mining company or government 'spin' will alter this.

# Mine Closing Dates



## THE CRIMINAL CHARGES – against Unimin Australia Limited (renamed Sibelco).

In July last year the Queensland Court of Appeal unanimously ruled that Unimin had unlawfully removed and sold non-mineral from its Stradbroke island silica sand mine – Vance. (in late 2010 Unimin changed its name to Sibelco, after its parent company, but remains a private Belgian company with the same family ownership).

Investigations have revealed that Unimin / Sibelco and its predecessor, ACI, unlawfully took up to 100,000 tonnes of sand per year over two decades. The Court of Appeal ruled that the payment of some royalties was irrelevant. Based on a conservative retail value of \$50 per tonne, the extent of this unlawful activity could be in the vicinity of \$80 million.

Although the unlawful nature of the actions has been established, Unimin/ Sibelco's criminal responsibility has not yet been determined. The company is facing three criminal charges in the Brisbane Magistrates Court – charges which allege that it took the sand without lawful authority, but do not allege dishonesty.

However, Mr Peter Callaghan SC, who is now counsel assisting Justice Kate Holmes at the floods enquiry, and Mr Andrew Boe several months ago provided a legal opinion that there was a prima facie case against Unimin/Sibelco for stealing and misappropriation/ fraud. This advice followed the leaking of a previously concealed independent investigation report handed to the government in February, 2009 but later concealed from the Supreme Court and Court of Appeal. These courts were told by Unimin that it was innocent of any intentional wrongdoing.

The report contains evidence from three EPA officers that Unimin knew it was not entitled to take the sand, falsely denied it when challenged by the EPA and continued to sell it after it was told by the EPA to stop ie acted in an intentional and dishonest manner.

The legal opinion was immediately sent to the Premier by our lawyers and later to the Attorney-General. Still there is no action to prosecute these offences - offences which properly reflect the serious nature of the allegations.

The government has recently made conflicting statements as to whether it has supplied the evidence to the Director of Prosecutions to enable the DPP to assess the opinion of Mr Callaghan SC and Mr Boe and take action. The Environment Minister and the Director General of DERM both stated on Sunday 28<sup>th</sup> March, 2011 that the evidence had been forwarded to the DPP. However the DG has since stated that the evidence has not been sent to the DPP. What is the true position ?

It appears that the evidence and Mr Callaghan SC's opinion may have been sent to the police but not the DPP – by a department which itself may be involved in wrongdoing in relation to these issues. There have already been two investigations. Two of the most respected criminal lawyers in Queensland have provided an opinion that there is a prima facie case against Unimin for stealing and fraud. If there is a need for any further investigation , it should be under the close supervision of the DPP, for obvious reasons. The DPP should also be asked by the Attorney-General to take over the prosecution of Unimin to enable the DPP to take possession of all of the relevant evidence from a department which has question marks over its role since it received the independent investigation report in February, 2009, implicating Unimin in intentional wrongdoing.

In these circumstances, why is the government assisting Unimin/ Sibelco by introducing legislation to extend its mining leases –including extending leases involved in the unlawful activity and possible serious criminal actions?

Why is the government not applying the existing laws which apply to expired mining leases ?  
Is it because it knows that if those laws were genuinely applied, the result would be the end of mining on these leases and the actual protection of the environment of North Stradbroke Island ?