

Judicial Review Act 1991

Statement of Reasons in relation to the decision made on 22 June 2007 to amend environmental authority No. MIM800088202 pursuant to s.292 of the *Environmental Protection Act 1994* (the Act).

REQUEST FOR STATEMENT OF REASONS AND STANDING

1. At all material times, I was a duly authorised delegate of the administering authority.
2. By email dated 5 September 2007, [sch4p4(6) Personal in] the then Vice-President of the Stradbroke Island Management Organisation (SIMO), requested a Statement of Reasons relating to the administering authority's decision to accept the May 2007 supplement to the June 2006 Rehabilitation Acceptance Report provided by Stradbroke Rutile Pty Ltd (the environmental authority holder) and include conditions H6 to H12 inclusive in environmental authority MIM800088202 (the environmental authority).
3. I am satisfied that SIMO is a person who, pursuant to section 32 of the *Judicial Review Act 1991*, may request a written statement of reasons in relation to the decision to amend the environmental authority.

RELEVANT LAW

4. The relevant section for the decision is section 292(1) of the *Environmental Protection Act 1994* (the Act), which provides:

The administering authority may amend an environmental authority (mining activities) at any time if-

- (a) it considers the amendment necessary or desirable because of a ground mentioned in subsection (2); and
- (b) the procedure mentioned under division 2 is followed or the holder has agreed in writing to the amendment.

5. In making a determination as to whether the amendment was necessary or desirable, I decided that, to the extent possible, it was appropriate to also consider all of the matters that the administering authority would have been required to consider if it was deciding an application for an environmental authority, including, but not limited to, the standard criteria¹.

ADMINISTRATIVE PROCEDURE

6. On 1 June 2007, I wrote to the environmental authority holder and advised it of the rehabilitation acceptance criteria which it was proposed to incorporate into the environmental authority (by amendment to it).
7. On 22 June 2007, the environmental authority holder agreed in writing to the amendment.

¹ Refer for example to ss 207 and 210 of the Act.

8. On 22 June 2007, the administering authority amended the environmental authority pursuant to s. 292 of the Act.

FORMER ENVIRONMENTAL AUTHORITY CONDITIONS REQUIRING SUBMISSION OF REPORT

9. Prior to the amendment of the environmental authority on 22 June 2007, the environmental authority required:
 - a. the environmental authority holder to submit a report to the administering authority proposing rehabilitation acceptance criteria by 30 June 2006;
 - b. the administering authority to make a decision regarding its proposed criteria by 2 June 2007; and
 - c. the environmental authority holder and administering authority to settle the rehabilitation acceptance criteria by 30 June 2007.

SUBMISSION OF REPORT AND SUPPLEMENT

10. On 30 June 2006, the environmental authority holder provided the Environmental Protection Agency (EPA) with a Rehabilitation Outcomes Report (dated June 2006).
11. On 15 May 2007, the environmental authority holder provided the EPA with a supplement to the Rehabilitation Outcomes Report (dated May 2007).
12. Both the Rehabilitation Outcomes Report and the supplementary report proposed rehabilitation acceptance criteria as required by the environmental authority.

NEGOTIATIONS WITH ENVIRONMENTAL AUTHORITY HOLDER AND CONSULTATION WITH STAKEHOLDERS

13. In addition to the Rehabilitation Outcomes Report and the supplementary report, there were numerous meetings, and items of correspondence passing, between officers of the EPA and representatives of the environmental authority holder to negotiate the development of appropriate rehabilitation acceptance criteria.
14. In accordance with section 6 of the Act, the administering authority also consulted with, and had regard for the views of stakeholders and the community, in relation to the development of appropriate rehabilitation acceptance criteria and amendment of the environmental authority.

SCOPE OF REQUEST FOR REASONS

15. SIMO's request is limited to the inclusion of conditions H6 to H12 in the environmental authority. Conditions H6 to H12 inclusive are set out in Attachment 1.

INCLUSION OF REHABILITATION CRITERIA GENERALLY – DECISION WHETHER NECESSARY OR DESIRABLE

16. In Queensland, mining activities are generally carried out on the basis that:
 - a. the activities will ultimately cease when the resource is depleted;

- b. the land on which the activities are carried out is satisfactorily rehabilitated to one or more sustainable post-mining land uses; and
 - c. the environmental authority will be surrendered.
17. The administering authority must be satisfied that the land on which mining activities has been carried out has been satisfactorily rehabilitated before it can give progressive certification pursuant to section 266J of the Act, or approve a surrender application pursuant to section 277 of the Act.
18. The administering authority must consider a number of criteria in making decisions regarding progressive certification and surrender, which include the assessment of either a progressive rehabilitation report or final rehabilitation report.²
19. Prior to amendment of the environmental authority on 22 June 2007, there were no conditions about rehabilitation objectives, indicators or completion criteria in the environmental authority.
20. I made a finding that it was appropriate that the environmental authority included conditions about rehabilitation objectives, indicators and completion criteria.³
21. I also made a finding that those conditions had to be measurable and auditable pursuant to Chapter 5, part 11 of the Act.⁴
22. That is, I found that that the inclusion of rehabilitation acceptance criteria generally in the environmental authority was necessary or desirable.

INCLUSION OF REHABILITATION CRITERIA CONTAINED IN CONDITIONS H6 to H12 INCLUSIVE- DECISION WHETHER NECESSARY OR DESIRABLE

23. Once a determination had been made that the inclusion of rehabilitation acceptance criteria was necessary or desirable, I then considered the actual terms of any such rehabilitation acceptance criteria.
24. I determined that any rehabilitation acceptance criteria must:
- a. be measurable and auditable; and
 - b. ensure that rehabilitation works meeting the criteria will achieve any site-specific rehabilitation goals, as well as the four general rehabilitation goals:
 - i. safe to humans and wildlife; and
 - ii. non-polluting;
 - iii. stable; and
 - iv. able to sustain an agreed post-mining land use; and
 - c. be consistent with the objects of the Act.
25. Whilst not a requirement of section 292, I also determined that in considering the terms of any rehabilitation acceptance criteria, it was appropriate to consider the standard criteria.

² Refer to s 266K regarding Progressive Certification and s 278 regarding surrender of environmental authorities.

³ Refer s 210(4)

⁴ Refer s 203(2)(a).

26. The consideration of the standard criteria is summarised below:

- d. *The principles of ecologically sustainable development as set out in the 'National Strategy for Ecologically Sustainable Development' – the rehabilitation acceptance criteria are consistent with the five key principles of NSESD⁵.*
- e. *Any applicable Environmental Protection Policy –*
 - i. The *Environmental Protection Policy (Water) 1997* (EPP Water) is relevant to landform construction, particularly given the potential for impact to waters (including groundwater) from mining activities (including rehabilitation activities).
 - ii. The administering authority's decision whether to accept or reject the Environmental Report submitted by the environmental authority holder with respect to the construction of the Ibis Dune, was also due on 2 June 2007;
 - iii. As the decision-maker with respect to the Ibis Dune environmental report, I considered that the decision with respect to amendment of the environmental authority regarding the inclusion of rehabilitation acceptance criteria had to be consistent with the decision regarding the Ibis Dune Environmental Report;
 - iv. A Significant factor in assessing the Ibis Dune Environmental Report, and making the decision whether to accept or reject it, was the consideration of the EPP (Water), and particularly the impact on the environmental values of the waters of Stradbroke Island and surrounding environment;
 - v. On 2 June 2007, I made a decision to accept the Ibis Dune Environmental Report, and at the same time amended the environmental authority to include a requirement that the environmental authority holder carry out groundwater monitoring and modelling directed to ensuring that impacts on groundwater and groundwater dependent ecosystems associated with future mine planning and mining are appropriately managed to prevent or minimise adverse impacts to environmental values (water), and therefore to prevent or minimise environmental harm;
 - vi. The rehabilitation acceptance criteria, and requirements of the environmental authority that relate to managing the impacts on the environmental values of the waters, are consistent with the EPP Water.
- f. *Any applicable Commonwealth, State or local government plans, standards, agreements or requirements –*
 - i. Parts of North Stradbroke Island are listed on the Register of the National Estate as the areas provide excellent examples of parabolic transgressive dunes and long parabolic dunes. Listing on the Register does not constrain the use or management of the land. However, the environmental values of North Stradbroke Island are

⁵ Integrating economic and environmental goals in policies and activities; ensuring that environmental assets are properly valued; providing for equity within and between generations; dealing cautiously with risk and irreversibility; recognising the global dimension.

relevant to the decision to amend the environmental authority – consideration of these values is set out at e. below.

- ii. The mining activity is an existing lawful use.
- iii. There are no other governmental plans, standards, agreements or requirements, other than those established under the Act, that are directly relevant to the decision.

g. *Any applicable environmental impact study, assessment or report –*

- i. The Rehabilitation Outcomes Report (dated June 2006) and supplementary report (dated May 2007) are relevant to the decision to amend the environmental authority to include rehabilitation acceptance criteria.
- ii. The Rehabilitation Outcomes Report indicates that the current intended post-mining land use is 'native bushland'. The administering authority considers that this is an appropriate post-mining land use.
- iii. Through the assessment process, I accepted that safety and other technical constraints limit reconstruction of pre-mining topography.
- iv. Through the assessment process, I reviewed and considered the Environmental Monitoring Reports submitted by the environmental authority holder periodically.

h. *The character, resilience and values of the receiving environment –*

- i. North Stradbroke Island is of high conservation value characterised by its:
 - Diversity of landforms, vegetation and fauna;
 - Significant dunes and dune systems;
 - Significant vegetation communities, which in some cases provide habitat for significant species of fauna; and
 - Significant aesthetic value.
- ii. Rehabilitation works meeting the criteria, which includes re-establishing native bushland, will minimise environmental harm in relation to the land on which mining activities occur. To that end:
 - Condition H6 requires that landform constructed pre-1 January 2007 meet certain criteria, which have already been achieved. During the assessment process, I found that those areas where rehabilitation has commenced or completed should not be reconstructed.
 - Condition H7 requires that, if any landforms constructed pre-1 January 2007 are re-disturbed by mining activity, the landform will then need to be constructed to meet the post-1 January 2007 criteria set out in condition H9. Condition H8 requires that the planning document must reflect re-disturbance of landforms constructed pre-1 January 2007. During the assessment process, I found that any areas that re-disturbed should meet the landform requirements applicable at that time.
 - Conditions H9 – H12 set out the requirements for landforms constructed post-1 January 2007:
 - Slopes of constructed landform must not exceed 25 degrees from horizontal – This reflects the technical constraints on the mining activities that I accepted.

The safety constraints, which I accepted, are also reflected in condition H11;

- o The requirements for return of aspect and aspect elements differ according to whether the relevant mining block is in balance – This reflects the volume of sand available for reconstruction of landform at certain times on the mine path;
 - o When “in balance” 80% of each mining block must have the pre-existing aspect element returned to the same location – this reflects my finding as to the higher importance of aspect over other landform elements;
 - o The other requirements of H9 set out requirements regarding the return of terrain elements, including the area of land at each mine site to include returned terrain elements, and requirements for diversity of terrain elements – this reflects my finding that significant portions of the mine sites must contain terrain elements that were present in the baseline topography, and the need for diversity of landform.
- i. *All submissions made by the applicant and submitters* – there is no formal applicant or submitters for the relevant decision. Key submissions made by the environmental authority holder are set out in the Rehabilitation Outcomes Report and supplementary report and summarised above at d. above. Submissions made by stakeholders, including SIMO, dealt with at i. below.
- j. *The best practice environmental management for activities under any relevant instrument, or proposed instrument (in this case the environmental authority)* – Landform reconstruction post- 1 January 2007 and the creation of a bushland post-mine land use will minimise land degradation post mining. Such rehabilitation works will ensure sustainable terrestrial and aquatic ecosystems on the former mine path.
- k. *The financial implications of the requirements under an instrument or proposed instrument (in this case the environmental authority) as they would relate to the type of activity or industry carried out, or proposed to be carried out, under the instrument* – Rehabilitation of land on which mining activities is carried out, or is proposed to be carried out in the future, in order to meet the rehabilitation acceptance criteria involves significant expense to the environmental authority holder. The rehabilitation acceptance criteria do allow the environmental authority holder to construct landforms that are different to pre-mining topography. Any requirement to construct landforms that are, to the extent physically possible, the same as the pre-mining topography would require the environmental authority holder to significantly change the nature of its mining operations, which would have significant financial implications for the environmental authority holder.
- l. *The public interest* –
- i. The public interest will be met by achieving the most appropriate balance between conservation of the environmental values of

Stradbroke Island (and the mining leases in particular) on the one hand with the economic benefit to the State derived from the utilisation of Queensland's mineral resources.

- ii. During the assessment process, a consultation record document was prepared, ensuring that all submissions by interested parties, including SIMO, were considered.

m. *Any applicable site management plan –*

- i. There is no site management plan approved under Chapter 7, part 8.
- ii. However, the environmental authority holder is required to lodge a Plan of Operations (s. 233) and audit statement (s. 234) for all mining activities that are being carried out on the mining leases over the planning period of up to five years.
- iii. A Plan of Operations must describe the actions and programs to achieve compliance with the conditions of the environmental authority.
- iv. The holder of an environmental authority must not conduct mining activities without a current Plan of Operations (s. 233(1)(a)).
- v. The holder of the environmental authority has a current Plan of Operations that has been assessed against:
 - the content requirements of the Act under s. 234(1);
 - the audit statement requirements of the Act under s. 234(3);
 - and
 - the financial assurance calculation requirements.
- vi. During the assessment process, the requirement of previous Environmental Management Overview Statements (EMOS), and particularly the commitments in relation to landform construction (which are also summarised in the Rehabilitation Outcomes Report) were considered.

- n. *Any relevant integrated environmental management system or proposed integrated environmental management system –* There is no relevant integrated environmental management system or proposed integrated management system.

- o. *Any other matter prescribed under a regulation –* No other matters are prescribed under a regulation in relation to the decision to amend the environmental authority.

DECISION

27. I decided that amendment of the environmental authority to include rehabilitation acceptance criteria was considered necessary or desirable on the following grounds:

- d. an environmental report (being the Rehabilitation Outcomes Report and the supplementary report) was given to the administering authority by the environmental authority holder; and
- e. a significant change in the way in which the mining activities were being carried out was proposed, including mine planning and rehabilitation works; and

- f. the amendment was necessary to prevent environmental harm not already authorised under the environmental authority.

27. I also decided that amendment of the environmental authority to include rehabilitation acceptance criteria was considered necessary or desirable to achieve the objects of the Act, and was consistent with Chapter 5 of the Act.

28. With respect to the terms of the rehabilitation acceptance criteria, I found that the rehabilitation acceptance criteria contained in conditions H6 to H12 inclusive are:

- a. measurable and auditable;
- b. such that rehabilitation works meeting the criteria will achieve the stated site-specific rehabilitation goals;
- c. such that rehabilitation works meeting the criteria will achieve the four general rehabilitation goals;
- d. consistent with the objects of the Act;
- e. consistent with Chapter 5 of the Act; and
- f. the most appropriate rehabilitation acceptance criteria having regard to the standard criteria, and the need to carry out the activities in such a way that prevents or minimises environmental harm.

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Delegate of Administering Authority
Environmental Protection Act 1994