

Question 1

Maddern: Anne Maddern for Maryborough. Just like to take up that point, it wasn't the original question I was going to ask but the environmental authority now says that there's not to be any harm outside of the area that they're mining. If there is harm, what is the penalty? There would be a penalty of some description if there was environmental harm outside of the mining area?

Hertslet: It would constitute an offence subject to the evidence and the investigation. And there's obviously a range of enforcement action that the department can take. The actual penalty would be subject to a judicial process.

Maddern: So there is penalties if they do cause environmental damage outside of the mining area. I'll just go back to Mr Bray but I'm not sure who's going to be able to answer this question. In your statement yesterday you said "It has been suggested by some submitters that the extension of sandmining provided for in the Bill will damage future national parks" and underlined in your statement "the sandmining that will continue is being carried out on land that has already been subject to mining." Can I assume from that the land to be mined in the mine path has previously been mined?"

Bray: Yes I made that statement on advice. Mark did you want to add to that in terms of the...

Kelly: We'll pass that to Bryce Hertslet and possibly to the Mining Registrar for Brisbane District Office but I'll pass it to Bryce Hertslet first.

Hertslet: Sorry would you mind asking or repeating the question?

Maddern: It says in the statement that Mr Bray made yesterday "the sandmining that will continue is being carried out on land that has already been subject to mining" and I'm asking that the mine path that's suggested in this Bill will now be in areas that have previously been mined, so, they won't be mining virgin land.

Unknown: National parks.

Maddern: Under the National Parks path.

Hertslet: I'd like to take that on Notice because I'm not sure to the extent. What I can say though is the areas where approval has, or potentially will be given for mining, they're not in the, I guess, the higher protected areas, namely the Category A and Category B. I'm not sure to what extent they've been impacted in the past.

Rickuss: Would the mining registrar like to comment on that? Have you got more details you can add to that?

Watson: I'll have to take that question on Notice.

Maddern: I think I just probably need to alert you to the fact that it related to national parks.

Response from Department of Environment and Heritage Protection:

The proposed project area within the Enterprise Mine incorporates approximately 728 ha (70.12%) of undisturbed vegetation and 311 ha (29.88%) of pre-disturbed vegetation.

There are no areas within the proposed project area which meet the definition of Category A and Category B environmental sensitive areas.

It is important to note that there is some Category B (Ramsar Wetland) within the mining lease and this has been excluded from the proposed project area.

Question 2

Trad: Mr Meadowcroft, through you Mr Bray, if I could I ask you as the Director of Legislative Support, where two Acts seem to contradict each other, which one supersedes? Is it the more recent one?

Meadowcroft: In the absence of any other clarification, yes that would be correct.

Trad: Ok. So, potentially, the amendment Bill we have before us, by including the Environmental Authority in the Bill ensure, and with that Environmental Authority having excluded Categories A and B, will in fact supersede the Aboriginal Cultural Heritage Act, if there are issues of contention around areas of cultural significance.

Meadowcroft: I'd probably have to take that question on Notice...

Trad: Could you please take it on notice? Yes, because I understand that this legislation, by being new legislation, where there is an issue of contention, may in fact supersede where a conflict exists.

Response from the Department of Natural Resources and Mines:

It is assumed that the issue referred to is the fact that the new Environmental Authority no longer refers to Category B environmentally sensitive areas. The Environmental Protection Regulation 2008 defines Category B areas and includes the following:

'(f) an area recorded in the Aboriginal Cultural Heritage Register established under the Aboriginal Cultural Heritage Act 2003, section 46, other than the area known as the 'Stadbroke Pastoral Development Holding', leased under the Land Act 1994 by lease number PH 13/5398;'

Officers from the Department of Environment and Heritage Protection made inquiries with the Cultural Heritage Unit at the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs who have advised that there are no listings on the Aboriginal Cultural Heritage Register for the relevant mine leases. There are a number of listings on the database, however they have not been progressed to the Register and as such do not meet the definition.

Importantly, neither the *North Stadbroke Island Protection and Sustainability Act 2011* or any provision of the relevant Environmental Authority provides an exclusion from complying with the *Aboriginal Cultural Heritage Act 2003*.

Sections 23 and 24 of the Aboriginal Cultural Heritage Act provide for a number of exemptions, none of which relate to Environmental Approvals. Those sections are set out below.

Given the above, the replacement of the Environmental Authority does not appear to 'supersede' the *Aboriginal Cultural Heritage Act 2003*.

Sections 23 and 24 of the *Aboriginal Cultural Heritage Act 2003*

23 Cultural heritage duty of care

- (1) A person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage (the ***cultural heritage duty of care***).
Maximum penalty—
 - (a) for an individual—1000 penalty units;
 - (b) for a corporation—10000 penalty units.

- (2) Without limiting the matters that may be considered by a court required to decide whether a person has complied with the cultural heritage duty of care in carrying out an activity, the court may consider the following—
 - (a) the nature of the activity, and the likelihood of its causing harm to Aboriginal cultural heritage;
 - (b) the nature of the Aboriginal cultural heritage likely to be harmed by the activity;
 - (c) the extent to which the person consulted with Aboriginal parties about the carrying out of the activity, and the results of the consultation;
 - (d) whether the person carried out a study or survey, of any type, of the area affected by the activity to find out the location and extent of Aboriginal cultural heritage, and the extent of the study or survey;
 - (e) whether the person searched the database and register for information about the area affected by the activity;
 - (f) the extent to which the person has complied with cultural heritage duty of care guidelines;
 - (g) the nature and extent of past uses in the area affected by the activity.

- (3) A person who carries out an activity is taken to have complied with the cultural heritage duty of care in relation to Aboriginal cultural heritage if—
 - (a) the person is acting—
 - (i) under the authority of another provision of this Act that applies to the Aboriginal cultural heritage; or
 - (ii) under an approved cultural heritage management plan that applies to the Aboriginal cultural heritage; or
 - (iii) under a native title agreement or another agreement with an Aboriginal party, unless the Aboriginal cultural heritage is expressly excluded from being subject to the agreement; or
 - (iv) in compliance with cultural heritage duty of care guidelines; or
 - (v) in compliance with native title protection conditions, but only if the cultural heritage is expressly or impliedly the subject of the conditions; or
 - (b) the person owns the Aboriginal cultural heritage, or is acting with the owner's agreement;
or
 - (c) the activity is necessary because of an emergency, including for example, a bushfire or other natural disaster.

24 Unlawful harm to Aboriginal cultural heritage

- (1) A person must not harm Aboriginal cultural heritage if the person knows or ought reasonably to know that it is Aboriginal cultural heritage.

Maximum penalty—

- (a) for an individual—
 - (i) if the Aboriginal cultural heritage is a registered significant area or registered significant object—1000 penalty units or 2 years imprisonment; or
 - (ii) otherwise—1000 penalty units;
 - (b) for a corporation—10000 penalty units.
- (2) A person who harms Aboriginal cultural heritage does not commit an offence under subsection (1) if—
- (a) the person is acting—
 - (i) under the authority of another provision of this Act that applies to the Aboriginal cultural heritage; or
 - (ii) under an approved cultural heritage management plan that applies to the Aboriginal cultural heritage; or
 - (iii) under a native title agreement or another agreement with an Aboriginal party, unless the Aboriginal cultural heritage is expressly excluded from being subject to the agreement; or
 - (iv) in compliance with cultural heritage duty of care guidelines; or
 - (v) in compliance with the cultural heritage duty of care; or
 - (vi) in compliance with native title protection conditions, but only if the Aboriginal cultural heritage is expressly or impliedly the subject of the conditions; or
 - (b) the person owns the Aboriginal cultural heritage, or is acting with the owner's agreement; or
 - (c) the harm is the result of doing an act that is necessary because of an emergency, including for example, a bushfire or other natural disaster.
- (3) For subsection (1), it does not matter whether the circumstances of the person's knowledge arose before the commencement of this section, or arise after the commencement, or arose partly before the commencement and arise partly after the commencement.

Question 3

Trad: Mr Hertslet, can you advise whether or not Sibelco has advised you what areas under the new arrangements will be dry-mined and dredge-mined?

Hertslet: That would be subject to the plan of operation. We've had some, I guess, indications as to what that would be, but ultimately it would be submitted as part of the plan of operations, which we don't have for the new proposal yet.

Trad: Ok. So, you're unaware at this stage. And when is the plan of operation due to be submitted?

Hertslet: I'd have to take that on Notice.

Trad: Could you please? Thank you.

Response from Department of Environment and Heritage Protection:

The Department of Environment and Heritage Protection is not aware of where dry mining and dredge mining will occur within the proposed project area. As required by section 288 of the *Environmental Protection Act 1994* the mine operator is required to provide detailed information within their Plan of Operations as to where both dry and dredge mining is to occur within the proposed project area.

An amended Plan of Operations must be submitted to the Department in accordance with section 289 of the *Environmental Protection Act 1994* prior to any changes to the operation commencing.