

Submission to the Independent review of the *Environment Protection and Biodiversity Conservation Act 1999*

Name of organisation: Stradbroke Island Management Organisation Inc
Name/s of author/s: SIMO committee, Jackie Cooper president

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Secretariat Independent review of the EPBC Act 1999 GPO Box 787 Canberra ACT
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*Please note that SIMO requested and was granted an extension until 15 January by
Ashleigh McDonald on 19.12.2008.*

Introductory remarks

The Stradbroke Island Management Organisation was formed in 1978. Over many years SIMO has attended stakeholder talks with the mining companies operating on North Stradbroke Island, to negotiate for better environmental outcomes and especially for the protection of water bodies and wildlife habitats.

SIMO has also lobbied the Redland City Council and Queensland State Government for more than 20 years to count the island's koalas (one of the only naturally occurring island koala populations) and to map koala habitat so that a conservation management plan can be developed for NSI. SIMO is currently urging the State Government to extend the recent Koala Taskforce recommendations to include NSI, where koalas face specific threats and stresses different from those encountered by the mainland urban koala population, namely from sandmining.

SIMO is also engaged in ongoing talks with the sandmining companies, Consolidated Rutile Limited and Unimin, as well as the Environmental Protection Agency, to secure protection of rare and vulnerable frog species on leases (Cooloolah Tree Frog, *Litoria cooloolensis*; Wallum Froglet, *Crinia tinnula*; Olongburra Frog, *Litoria olongburensis*; Wallum Rocket Frog, *Litoria freycineti*); and protection of existing koala habitats and additional rehabilitation of destroyed habitats.

Several areas on mining leases have strong National Park potential. The State Government is assessing areas of NSI to declare National Park.

We recognise that the Environment Protection and Biodiversity Conservation Act 1999 goes some way to protecting Ramsar sites and endangered species on NSI. However, we have come up against operational and jurisdictional problems that we outline below in the hope that the EPBC Act can be amended to ensure that its objectives are better met.

Protection needed for regional/island populations

We are aware that there is a provision within the current EPBC Act to recognise regional populations. However, we wonder if this needs to be reviewed to make it feasible and straightforward to list the kinds of regional populations that we have on North Stradbroke Island? To date (to our knowledge) only the grey nurse shark has a regional listing under the Act, which suggests regional populations or island populations are generally not considered by the Act.

NSI has the only naturally occurring island population of koalas in this country. The koalas on the island have adapted to survive and flourish in a very particular environment of low-nutrient sandy soils and wetlands. They have many features that separate them from mainland populations. It is very unlikely that there is now any genetic mixing of the NSI and mainland populations: NSI koalas form a disjunct population. Over time it may diverge further from the characteristics of the mainland population.

In 2008, RCC commenced the first island-wide koala count and habitat mapping on NSI. The island population has been excluded from all previous koala censuses and State koala plans. NSI koalas are being overlooked currently by the Premier's Koala Taskforce, whose conservation recommendations apply only to mainland urban koalas. Yet given the alarming decline in the mainland population during this past decade, the NSI population may soon to be the only remaining koalas in South-East Queensland. SIMO is concerned that, without immediate protection measures, conservation of NSI koalas will not be

considered until the island population is showing evident signs of stress, by which time it is likely to be too late (which seems to be the current situation for mainland koalas in South-East Queensland, with the current flurry of last-minute measures designed to save the few pockets left, against all odds).

SIMO considers that the koala should now be declared critically endangered in South-East Queensland, including NSI.

The EPBC Act does not recognise the NSI population because the koala is not listed Australia-wide as endangered. The EPBC Act does not protect against regional extinctions; **we consider that the Act should protect regional and island populations.**

Some groups are also advocating a special National Koala Act that overrides other Acts, but in the meantime the EPBC Act needs to be strengthened to recognise and protect regional populations.

(A 100km/hr road bisects the northern section NSI, and heavy mining trucks add to the considerable periodic holiday traffic load. Wildlife kills are frequent. EPBC Act protection for island koalas would assist in persuading local authorities to implement traffic calming measures and driver awareness/information campaigns.)

Sandmining threats to NSI koalas

The EPBC Act does not protect koalas on NSI because it does not protect koala habitat from destruction on sandmining leases. Reducing koala habitat reduces the koala population.

Sandmining has had, continues to have, and will continue to have a very large negative impact on koalas and other wildlife on NSI. Of the island's 27,500 hectares, 70 percent is under mining lease. Ramsar sites account for around 16,000 hectares; some Ramsar sites overlap with mining land.

Sandmining operations have been a threat to NSI koalas for over 50 years. When koala habitats were bulldozed decades ago in the southern parts of the island, displaced animals were progressively forced north. Today many koalas are found clustered around the three townships, Dunwich, Amity Point, and to a lesser degree, Point Lookout. Unfortunately this locates them in proximity to vehicles and dogs (domestic and feral).

For years SIMO was unable to prevail on the sandminers to acknowledge koalas on their leases, consequently historically no specific measures were undertaken to count/monitor/conservate them; and even now the program to count and monitor island koalas is still at a preliminary stage, so knowledge of the island koala population is far from being definitive.

Although these days the sandminer is required to undertake 'research' of the koalas on-lease, none of this research was publically released until January 2009, when a single paper was circulated.

Preliminary research suggests that access to water and possibly nutrients are key factors influencing NSI koalas' preferences for certain trees. Koalas seem to favour the trees around water bodies and swamps and household gardens. Thus there is potential for koala habitat to be affected not just because trees are cleared but also because the trees lose 'koala quality' through insufficient water or nutrients. Therefore maintaining the

integrity of the island's hydrology is important; that hydrology is dependent on how water is flowing through the dunes across the entire island. Any development on the island that affects hydrology has the potential to affect koala habitat. Sandmining has the biggest impact on hydrology. It displaces vast quantities of water from one side of the island to the other. Further, the process of mining homogenises the internal structure of the dunes, and the resultant effects on water flow through the replaced dunes are unknown. **We recommend that the implications of factors such as hydrology and water quality affecting koalas should be considered when government develops policy.** (The issue of water quality and the health of koala trees may also be relevant to mainland habitats.)

Mining leases are regulated by an Environmental Authority (EA) which stipulates what can/cannot be done on a lease. These days, koalas are acknowledged here and there on mining leases on NSI; but when a tree marked for removal on a mine site has a resident koala, the bulldozer driver only has to wait for the koala to leave the tree before the tree can be removed. **SIMO considers that the EPBC Act needs to ensure that no koala trees can be destroyed; and that mining cannot take place in koala habitats.**

Another EA measure related to koalas is that rehabilitation of a postmine area must take place, but it is always at some time in the future, usually many, many years after the koala habitat has been removed. Since mining companies have authorities to mine for 20-30 years, they have permission in advance to clear koala habitat in 20-30 years time. Clearly this is problematic: **SIMO calls for amendments to the EPBC Act to ensure that long-term approvals should not be exempt from the EPBC Act once the koala is listed under EPBC.**

There is a minimum open area allowed for each mining lease, however sandminers typically flout this requirement by giving the EPA an excuse, which is accepted, for not revegetating in a timely manner. The open areas make it very difficult and dangerous (foxes inhabit the island) for koalas to travel to other habitat across the mined areas.

Until recently there was no preferential replanting of koala trees in rehabilitated areas on mining leases. SIMO considers that the mining companies have not restored the full extent of koala habitat destroyed in the course of their operations.

When is the EPBC Act triggered?

SIMO wishes to raise a general question of whether the Act is clear about when EPBC considerations are triggered relative to the various stages of mining approval, ie, does a species have to be listed prior to one of the actions below taking place in order for the Act to come into effect?

Mining application
Mining approval
Granting of EA
Approval of ESR or EIS
Approval of EMP under Commonwealth

What happens if a species is listed under EPBC after a mining lease has been granted, but before the Environmental Studies Report/Environmental Impact Statement is approved? Or at any other point in the mining approval chain above? We have a current example: CRL intends to mine through Fisherman's Swamp and drain a lagoon off-lease; the proponent claims that the EPBC Act is not triggered because the ESR was approved prior to the Act. The swamp and lagoon contain listed frogs. **SIMO proposes that this**

loophole in the Act be closed, if indeed there is a loophole that allows current and future actions threatening wildlife to be exempted because they were approved before the Act came into force.

Mining leases are held for long periods, 25+ years, with renewals. In the face of the challenges of climate change and so many other pressures associated with population growth, increasing numbers of species are becoming endangered. However, if EPBC species can receive protection on a mining lease only if it's declared before mining approval, that is hardly very satisfactory for biodiversity in the future. **We propose that triggers to the Act should not be restricted to the timing of mining approvals.**

Cumulative effects of exemptions from EPBC Act

The EPBC Act does not deal well with cumulative impacts or the impacts of previously approved developments. SIMO has been witness to the cumulative negative impacts and the legacy of such impacts from sandmining approved prior to the EPBC Act commencing in 2000. Grandfathering provisions (in sections 43A and 43B, which exempt development approved prior to 16 July 2000) allow mining companies to shrug off their environmental responsibilities: **SIMO proposes that grandfathering provisions should be tightened and/or eliminated from the Act.**

Problem of Commonwealth legislation managed by States

SIMO has ongoing difficulties in trying to get the EPA to properly do its job of administering the sandmining regulations. Consequently, we do not have confidence in the bilateral arrangement with the Queensland State Government whereby Commonwealth laws are managed by the State. **In order to protect biodiversity on NSI, we need Federal intervention: we need the EPBC Act to be able to list regionally endangered populations.**

Problems with implementation of the EPBC Act

1. In 2007 SIMO has sought clarification from the Commonwealth concerning impacts from CRL's mining operations, notably off-lease flooding from tailings into the Ramsar-listed Eighteen Mile Swamp; and CRL's mining adjacent to the escarpment, causing elevated water levels at the toe of the escarpment – with a potential to affect the Phaius orchid – and changing water levels to the swamp. SIMO spent a lot of time and effort trying to find out from the Commonwealth what was happening; we were unable to visit the site to see for ourselves. We were told that Commonwealth staff were in discussion with CRL but we were not to be made privy to any information. Despite the many emails and phone calls from us, all our questions have remained unanswered. We consider this episode to have been a great waste of our time. It indicates that **there are internal problems in administering the Act and responding to stakeholder concerns.**

It further points to the need for stakeholders to have more on-ground access to sites in order to examine the state of the environment and possible impacts of operations. In the highly orchestrated and controlled site visits we are sometimes able to make onto mining sites, we do not get to look at the things we prefer to see. **SIMO proposes that the EPBC Act make provision to allow stakeholders better access to sites where it is thought that environmental damage is potentially occurring, whether on-lease or off-lease.** (Note: To see effects on some off-lease sites, the only access may be through a mining lease, hence the need for permission.)

2. We consider that **the Act should be strengthened to protect ecological processes that support the habitat a listed species is dependent upon**. SIMO recently commented on a plan to protect a listed frog living in a creek whose catchment is to be sandmined. There is almost no scientific knowledge about how water flows through complex sand dune structures to reach the creek. In the absence of this knowledge, SIMO believes the mining company should have been required to research how the hydrology to the creek works. It's difficult to design an appropriate adaptive management plan if even the fundamentals are not known. SIMO is concerned that by the time any negative results might be recognised, it will be too late to fix up the catchment. Similarly, when evaluating a Ramsar wetland, it is important the hydrological processes that support that wetland are recognised and protected. If the hydrology is not understood, the proponent should be required to investigate it adequately.

3. In the same project mentioned in point 2, the mining company submitted a very sub-standard EMP and frog plan. A great deal of stakeholders' time was taken up commenting on numerous subsequent inadequate drafts. SIMO considers **there should be basic standards for environmental reports and studies that the mining company is required to meet from the outset**. Otherwise mining companies are free to engage in a process of attrition, trying to wear stakeholders down.

4. **Community stakeholders should be sent drafts and final copies of ESR/EIS, EMP and any other management documents at the same time that the Commonwealth is sent this material from a mining company**. In our experience, mining companies avoid sending the reports to us until the last minute and restrict the amount of time available for us to make comments.

5. Assessment of development or mining applications under the EPBC Act requires expert input. Therefore **as part of administering the Act, adequate funding is needed to engage independent experts**. In a recent case, SIMO was pleased to see that one of Australia's leading frog experts was engaged to assist in the development of an EMP for frogs. However we consider that a similar expert was needed to be engaged in the field of hydrology to ensure the frogs' habitat would be properly protected and monitored.

6. **The Commonwealth needs to provide enough funds and personnel to properly check that the provisions of the EMP are indeed implemented by a mining company for the life of the mine**. This is an ongoing but essential process. For all the effort put into development of EMPs, it amounts to nothing if not adequately followed up for the life of the mine.

7. Greenhouse gas is the big threat to biodiversity. Mining companies use vast amounts of energy. **SIMO considers that greenhouse emission should be one of the EPBC Act triggers**.

In conclusion

We do not have confidence in the bilateral arrangement with the Queensland State Government whereby the Commonwealth allows for the protection of biodiversity to be managed by the State. We need Federal intervention and oversight.

SIMO recommends that the EPBC Act be strengthened to recognise regionally endangered and isolated island populations such as the koala and other species. We think this is particularly important as habitat becomes more fragmented. It's also crucial in the light of climate change, as it is difficult to predict which regional populations will

survive the rapid and unpredictable shifts in weather and consequent habitat changes.

However, we are concerned that even if the koala is listed under the EPBC Act, land clearing, one of the major impacts on koalas, is currently not listed as a trigger for the Act. (It is listed as a 'threatening process' but does not trigger the Act into place). We consider this deficiency should be corrected.

We call for the koala to be declared critically endangered in South-East Queensland. Further, we call for the population of koalas on NSI to be listed in their own right as critically endangered. We understand this meets the criteria under the EPBC Act.

Our claims for koalas should be read to apply to other species that are regionally endangered.

We recommend that the EPBC Act conduct a regular review every three years of all species listed. A panel of experts for all the major taxonomic groups should be assembled to look at State and international listings to ensure the EPBC Act is kept up to date. Recommendations could be made to further investigate certain species with a view to listing them under the EPBC Act.

We suggest that the Federal Government make funding available to undertake the nominations for these listings. At present there are many anomalies where species are listed under State legislation and the animal is only found in that state, and yet it is not listed nationally. Also a number of species are listed internationally but not under the EPBC Act.

We consider that greenhouse emissions should be included as a trigger for the EPBC Act.

Thank you for the opportunity to make this submission to the review of the EPBC Act 1999.

Sincerely

Jackie Cooper
President
Stradbroke Island Management Organisation
PO Point Lookout 4183
3409 8944
ume@umemagazine.com