

Mr Richard Bingham,
South Australian Ombudsman,
PO Box 3651 Rundle Mall SA 5000

Email ombudsman@ombudsman.sa.gov.au

14th November 2013

Dear Mr Bingham,

**Re Rex Mineral's Mining Lease Proposal and Development Applications to the
Development Assessment Commission**

I am writing to you as Chair of the Yorke Peninsula Land Owners Group which is deeply concerned about a proposed open-cut copper mine on Yorke Peninsula. The Group has over 200 members and a following of over 550 people on its Facebook social media page.

Background to the mining proposal

Rex Minerals Ltd are seeking approval from the State Government to develop an open-cut copper/gold/iron mine near Pine Point on Yorke Peninsula.

A Mining Lease Proposal and associated Appendices are now before the State Government for consideration. Public comment on these closed on 8th November 2013.

Public comment is now being sought on three Applications by Rex Minerals to the Development Assessment Commission, with submissions due by Friday 15th November 2013.

- Applications 544/G017/13 and 544/G018/13 seek consent to undertake a boundary realignment and to construct two new sections of dual land road, one of which will redirect the current St Vincent's Highway away from the proposed mine site towards St Vincent's Gulf, with parts of the road running along the cliff tops of the gulf (see Figure 1).
- Application 544/V003/13 seeks consent to undertake modifications to the existing wharf infrastructure at the Port of Ardrossan to facilitate the shipping of ore concentrates.

The St Vincent's Highway Diversion and components of the mine operations (including a bore field and large waste rock dumps will be situated on coastal reserve land.

A proclamation made pursuant to the Mining Act (Mining (Reservation from Act) (Coastal Land) Proclamation 1973) prohibits the granting of exploration licences and

mining leases within that zone, which extends 800 meters inland from the high water mark.

However, according to their Mining Lease Proposal (section 4.1.1.5) in 2010, Rex Minerals sought and were granted a variation of that Proclamation. This variation excluded the coastal land covered by Rex's Exploration Lease 4514 from the coastal reservation, thereby opening the way for mining related activities to take place on that land.

Until the Mining Lease Proposal was released for public consultation only eight weeks ago, the local community was completely unaware that such an exclusion had been granted to Rex Minerals.

And even the MLP failed to stipulate that the exclusion covered not only the 6 kms of coastal land included in the proposed mining lease, but extended for a distance of 25 kilometers along the coast from Black Point in the south to just past Tiddy Widdy in the North (see Figure 1a).

It therefore includes sections of the Ardrossan and Pine Point townships, and the holiday settlements of Black Point, Rogues Point, James Well and Tiddy Widdy.

Residents within the coastal strip were therefore unaware that their properties were now vulnerable to mining exploration.

It appears that any property rights the affected residents may have had have been usurped by Rex Minerals without consultation and by a process hitherto unknown to the local community.

Our concerns

- No information has been provided to local residents on
 - the process by which the coastal strip was exempted from the coastal reserve
 - the reasons for exempting a 25 km parcel of land stretching well to the south and north of the proposed mining lease
 - the implications of this exemption for their rights as property owners
 - the potential threats this poses to the environmental integrity of the coastal reserve itself.
- Lack of public consultation:
 - Rex Minerals (MLP 4.1.1.5) claim that they consulted with "those stakeholders regarded as most relevant to the activities proposed within the coastal land, and DMITRE provided an opportunity to stakeholders for comment including regulatory bodies, DCYP, affected landholders and the

wider community through the established Community Consultative Group”.

- However, our preliminary inquiries indicate public consultation was minimal. Only one farmer recalls being contacted by Rex and the CCG was not established until 2012, well after the variation was granted in 2010.

Assistance sought from your Office

1. As a matter of urgency, we are seeking your assistance in clarifying the exact nature of the land in question, when, by whom and under what circumstances the exemption was granted, and what recourse land owners and residential owners have against any actions taken by Rex pertinent to this coastal zone?

A list of the specific questions regarding the variation to the Mining (Reservation from Act) (Coastal land) Proclamation re EL 4514 are detailed in Appendix 1.

However, of these, the most critical question in terms of timing is whether this exemption facilitates the granting of the Development Applications to DAC which are currently open for public consultation.

The road realignment will cause major environmental damage to the coastal reserve and the cliff tops of St Vincent’s Gulf.

If this section of land had not been exempted from the coastal reserve, would the application for the proposed road realignment be more likely to be rejected?

2. **Assistance in obtaining an extension of the public consultation period for the Development Applications**

Given that the public consultation period for the three Development Applications closes this Friday (15th November) it may be too short a time to undertake the discovery process and hence, allow us to respond effectively to the DAC.

We therefore ask you assistance in seeking an extension to the public consultation period for the three Development Applications in order to allow the issues we have raised to be fully investigated and the implications identified.

If you require further information, we would be pleased to meet with you at your earliest convenience. I can also be contacted on 0418 846215.

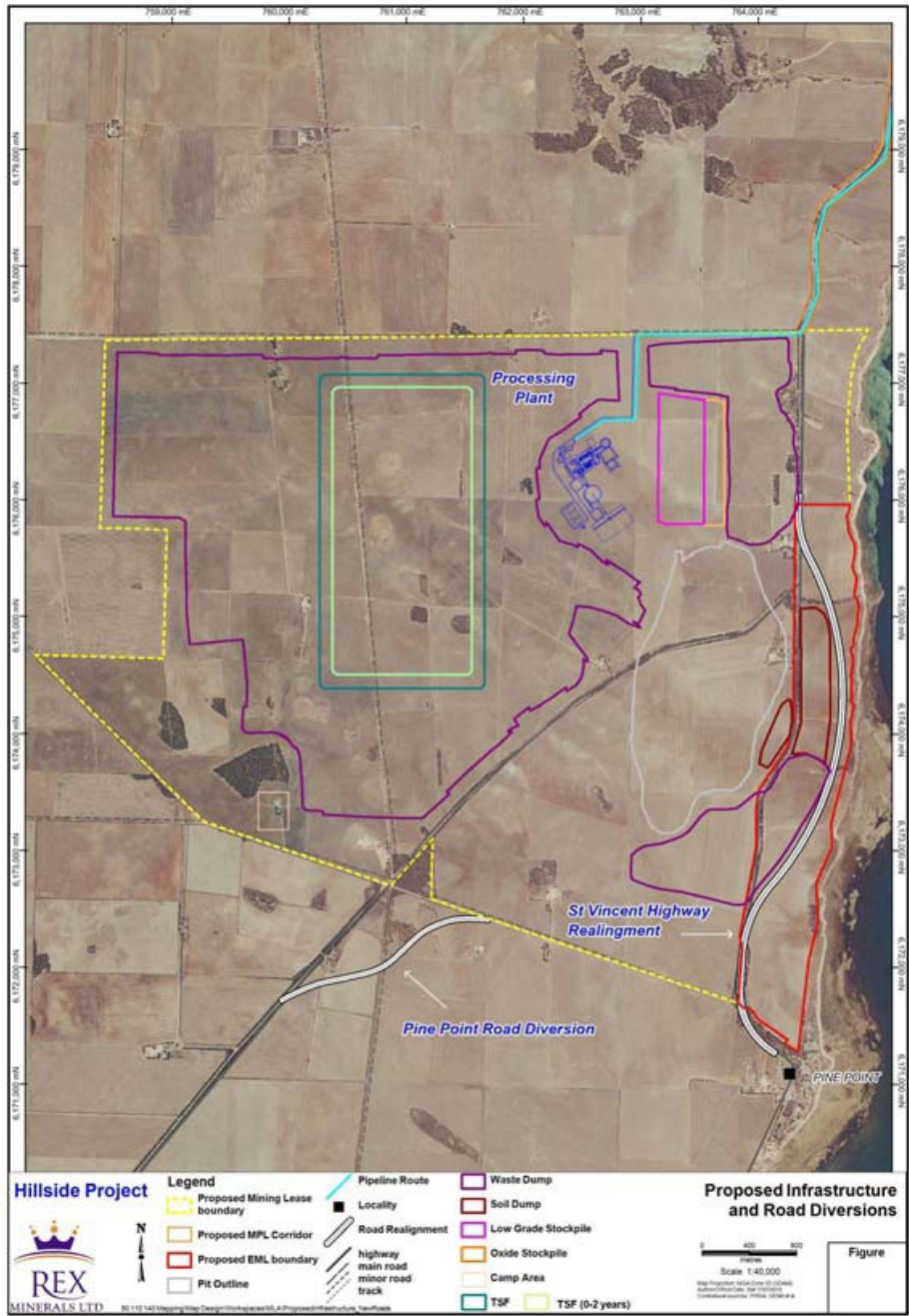
We look forward to hearing from you

Yours faithfully,

Stephen Lodge,
Acting Chair,
Yorke Peninsula Land Owners' Group

cc. Mr. T Koutsantonis, MP. Minister for Mineral Resources and Energy
Mr Nathan Zeman, Mining Regulation and Rehabilitation Branch, DMITRE
Commissioner Ted Byrt, Presiding Member, DAC

dd. **Figure 1: Rex Minerals proposed mine site at Hillside, Yorke Peninsula**
 (source: Rex Minerals' Hillside Copper Mine Information Sheet, July 2013)



ATTACHMENT 1

QUESTIONS

As a matter of urgency, we are seeking answers to the following questions re the variation to the Mining (Reservation from Act) (Coastal land) Proclamation re EL 4514 as follows:

- Has the philosophical underpinnings of the Proclamation been breached by the granting of this exemption?
- What other sections of the South Australian coast have been excluded as a result of an application by a Mining Company?
- **Was due process followed?**
 - What processes must be followed to have a section excluded from that proclamation?
 - What justifications are required to grant an exemption?
 - What arguments did Rex put forward to justify the application?
 - What level of public consultation is required before an exemption can be granted?
 - Must a public notice be issued in the local press?
 - Under the provisions of the Proclamation, was Rex required to consult with affected land owners including residents of affected towns and settlements?
 - If so, who did they consult and when?
 - Which department or Minister makes the decision to exempt?
 - If DMITRE, is it required to consult with the Coastal Protection Board or any other government agency/instrumentality
 - On what grounds was the exemption granted?
 - Is there a right of appeal against the decision?
 - When was the variation to the Proclamation gazetted?

- At the time of gazetting, is there further requirement for public consultation?
- What are the environmental implications of excluding the entire EL 4514 from coastal reserve land?
- If this section of land had not been exempted from the coastal reserve, would the application for the proposed road realignment be more likely to be rejected?
- What is the relationship between the protection of land under the proclamation and the council zoning of coastal protection land?
- If Rex have already gained a variation that excludes this whole section of coastal protection land and makes it available for both exploration and mining, why do they need to get that section of land rezoned by council?
- Why exclude the whole coastal section from Black Point to Tiddy Widdy? Does Rex have plans to explore and mine along this entire section?
- What protections do local residents in Ardrossan, Rogues Point, Black Point and James Well have against intrusions onto their property by Rex?