

Advertiser article on Yorke Peninsula Counsellors' conflict of interest re Rex Minerals' rezoning attempts

Dear member,

For your information, attached is an important article from today's Advertiser (Page 29, Saturday 12 April 2014) regarding the Ombudsman's ruling on a potential conflict of interest by three YP councillors who owned shares in Rex Minerals' Ltd.

Background

At its meeting on 11th September 2013, the *Section 101A Committee* of the District Council of Yorke Peninsula voted to progress a rezoning application by Rex Minerals Ltd. This application sought to rezone 5,000 hectares of land from Primary Production and Coastal Conservation to Mineral Extraction. This area is far greater than the 3,000 hectares covered by the mine's actual footprint. A likely reason for this application was to increase permissible noise levels in the area. Rex Minerals' Mining Lease Proposal notes that, under certain conditions, Rex will not be able to meet the noise limits set by the EPA for agricultural and coastal protection land in the area surrounding the mine site. We believe the company would be more able to do so if the 5,000 hectares were rezoned as Mineral Extraction simply because this land use category has higher permissible noise criteria.

Conflict of interest

At a subsequent informal council workshop held on 25 September 2013, information came to light that three councillors who had participated in the rezoning decision - the Mayor, Mr Ray Agnew, and Counsellors John Rich and Bob Nicholls – held shares in the mining company but had failed to disclose this. In response, a special Council meeting was convened, at which the motion to progress the rezoning application was rescinded.

The CE of the YPDC referred the matter to the Ombudsman for investigation, as required under the Local Government Act (1999).

In November 2013, the YPLOG Committee also wrote to the Ombudsman requesting that his Office investigate the extent of involvement of the three counsellors in **any** Council business relating to Rex Minerals, not just the rezoning decision and whether that involvement had resulted in unfair advantages to the company.

The Ombudsman's decision

While YPLOG's request did not result in a separate investigation, on 27th Feb 2014, the Ombudsman did provide a report to the District Council of YP.

In that report (see attached), the Ombudsman concluded

“In my opinion, the resolution passed by the committee, while favourable, would not in all likelihood have affected Rex Mineral's share price. Accordingly I am not satisfied that the council members, as a result of the specific resolution passed, would have had an expectation of a pecuniary benefit or detriment.,,, In the circumstances, it is my view that the council members did not have an interest under section 73(1) of the Local Government Act.

However, he did express *“some disquiet about this, as I consider that ‘the ordinary person in the street’ would perceive that the council members were conflicted.*

The aftermath

As predicted by the Ombudsman, his ruling that there was no conflict of interest, caused a high level of disbief within the community. The article in today's Advertiser indicates that changes to the Local Government Act may result.

The YPLOG will also re-approach the Ombudsman's Office to reiterate our original request that all Red-related decisions in which these three Councillors were involved be scrutinized.

Regards

YPLOG Committee