

# AGRICULTURE AND MINING



A better deal for everyone

Rowan Ramsey MP

# Agriculture and Mining

## Background

South Australia is a relative late-comer to the mining expansion that has fuelled spectacular growth and prosperity in other states, particularly Western Australia and Queensland. The most significant reason for this is the general nature of our geology. Apart from notable exceptions like the copper bonanza's of the 19<sup>th</sup> century based at Burra and Moonta and the Middleback Ranges near Whyalla, the birth place of the Australian iron and steel industry, our mineral deposits were covered millions of years ago by sand based deposits often hundreds of metres thick.

This has meant discovery of new mineral resources has been slow and development costs particularly high for open cut mines, the overburden must be shifted before extractive mining can commence. New technology based techniques have led to a raft of discoveries, particularly in a region now identified as the Gawler Craton, an ancient stable and highly prospective part of the continent covering almost half of South Australia.

South Australia has been built largely on our highly efficient agricultural production currently producing more than 6% of Gross State Product (GSP) directly and around double this amount again indirectly. The pastoral regions to the north make a very significant contribution, however the southern part of the state, mostly within two hundred kilometres of the coast and commonly referred to as our 'agricultural regions' contribute the bulk of the income.

The consequence of our late arrival to significant mineral discoveries is that South Australians have not previously dealt with the interface between mining and agriculture at any significant level.

## Agriculture

South Australia's agricultural regions (as opposed to pastoral) are areas of above 250mm average annual rainfall, and which range in use from broad acre cropping and or mixed farming enterprises through to intensive horticulture and viticulture. Radically changed farming methods have resulted in production increases, but more importantly in much better land husbandry, with farmers becoming much more conscious of environmental outcomes.

Significantly the vast bulk of farming is carried out by family based units, often generational farmers who are very focussed on 'leaving the farm better than they found it' and very attached to their family heritage. This kind of attachment and the contribution it has and continues to provide for the state economy should not be underestimated. It can be said with a great degree of confidence that no other ownership/management model of the South Australia's assets could have produced the same results as families who have been willing to work through tough times for less and harder than any other economic model could possibly produce.

## Mining

The interface/conflict between agriculture and mining is probably best exemplified by the recent approval for Rex Minerals to develop its Hillside copper project near Ardrossan on Yorke Peninsula. For many this has brought together all the conflicting issues regarding developing mines in 'prime' agricultural areas. The Ardrossan area is on central-eastern Yorke Peninsula receiving an annual rainfall of almost 500mm and while highly variable depending on the exact location, land values are around \$6000/ha.

The Hillside Tenement Documents provided by the South Australian Department of Manufacturing, Innovation, Trade, Resource and Energy (DMITRE) nominates a lease area of 2997ha (7402ac) for the mining operation, however the mining lease terms and conditions state that only 877ha (2166ac) would be permanently alienated following the restoration process at the completion of mining. The total directly and permanently affected area is about .4% of Yorke Peninsula's agricultural land.

Estimates on the value provided by the mine as compared to the continuation of farming on the land vary greatly with the SA Chamber of Mines and Energy (SACOME) stating it will take 21,000 years for agriculture to deliver the same income from the proposed site as will be produced through the life of the mine. While it is difficult to authenticate this figure the estimated production figures provided by Rex Minerals claim the mine will produce 75kt of copper per year, 60,000oz of gold and 1.2mt of iron ore for the first ten years. Spot price calculations suggest this should yield around \$700m pa and even if were only to equate to one or two thousand years of agricultural production, it is fairly obvious with those kind of rewards on offer governments and the population at large will enforce their rights to access the minerals.

## Ownership of Land

All farmers have known since the time they were interested in such matters that while they 'own' the rights to utilise the top metre or so of their farms, if minerals are discovered on their properties then under rights inferred by the constitution, those resources are owned by the states and by inference the people of the state.

Landholders occupy their land under a number of different types of titles ranging from the lowest security Pastoral Leases through to the most secure Freehold ownership. However, even though Freehold is robust enough to extinguish Native Title it does not transfer mineral rights to the landholder and if the holders of exploration/mining licenses pursue the matter through the courts it is almost certain the law will guarantee a right of access.

## SA Mining Act

The clauses in the SA Mining Act in reference to the landholder's recourse through the courts right to reject mining are brief and open to interpretation. Section 58A (5) states:

*If the court is satisfied on the hearing of an objection that the conduct of the mining operations on the land would be likely to result in substantial hardship or substantial damage to the land, the court may—*

*(a) determine that the land, or a particular part of the land, should not be used by the mining operator for the purpose of mining operations; or*

*(b) determine conditions on which operations may be carried out on the land by the mining operator with least detriment to the interests of the owner and least damage to the land.*

*(Source: [http://minerals.pir.sa.gov.au/licensing\\_and\\_regulation/legislation/mining\\_act\\_and\\_regulations](http://minerals.pir.sa.gov.au/licensing_and_regulation/legislation/mining_act_and_regulations))*

While the act provides little in the form of specifics it indicates that it is incumbent upon the landholders to prove that the proposed mining venture is likely to result in 'substantial hardship' or substantial damage'. However given that all mining results in some kind of 'substantial damage', at least at the mine site, we can probably interpret that to mean 'outside the ordinary' and the act then allows the court to determine the conditions in which mining can be carried out. Most believe that by default this means that the state has a right to mine its wealth and if an agreement cannot be reached with the landholder eventually the courts will decide a compensation figure and facilitate the mineral extraction.

## Environmental Approvals

The rural community quite rightly has strong concerns with the possible deleterious effects on the environment of any proposed mines. There is particular concern with management of underground aquifers, but more locally, dust, noise, surface run-off and visual amenity are all genuine issues. However, concerns for unacceptable environmental damage will not be confused with the right to mine in the eyes of the law.

New mining licences are increasingly facing more stringent operating conditions and certainly in the case of a mine like that proposed at Hillside the chance of an accidental marine discharge must be all but non-existent. Similarly where mining is proposed in the region of significant aquifers providing an economic benefit to a wider community, that too should be given appropriate weighting and to any who may face material damage a fair, equitable and generous course of redress must be available.

It is important though that these environmental concerns are addressed as a separate issue to the right to mine. The mining companies must be properly policed to ensure none of the conditions are breached and if they are, the government has the power to cause mining to cease until the issues are addressed. It is also important that the mining entity be responsible for the remediation of any possible damage incurred by poor adherence to the conditions of mining.

## The Stress of Negotiation

Generally speaking early exploration activities are not resisted by landholders, in many cases they are welcoming of the process and it is only after the point where the company may either announce a deposit of interest and begin a concentrated exploration program that landholders begin to wonder what their rights are and what the future might hold for them and their family.

Should the deposit prove to be an economical prospect and the prospective miner develops a mining feasibility study, landholders find themselves in a position where it can be difficult to justify new investment on property and the speculation is likely also to limit opportunities for a genuine sale.

Somewhere during this process the prospective miner will begin negotiations with the landholder. The landholder starts from a position of weakness inasmuch as while the South Australian Mining Act does not allow for compulsory purchase it does allow for the holder of the mining licence to seek access to the materials if agreement between the parties cannot be reached.

In practice this means the landholder has no real method of measuring their bargaining strength. Will the miner be prepared to buy the property or only part of it? Will they be prepared to pay more than the average market price for the area? Will they be prepared to pay double, three times or ten times the value of the property or parts thereof? Because these negotiations are almost always conducted under clauses of confidentiality, stress develops around not knowing what level of compensation the landholder's neighbour is being offered, whether they are the weakest link in the chain and consequentially will receive the worst deal, or alternatively whether they are the unreasonable one, holding up a project with considerable community benefits.

The negotiating process becomes a lawyer's picnic and an expensive process for both the proponents of the mine and the landholders. There simply has to be a better way of dealing with this conflict.

## A Better Way

Having concluded that in any protracted war on mining access, the state has the law on its side and that environmental impacts have a separate and deliberate mechanism to deal with those issues. It then becomes a matter of how we best deal with those who stand to lose the most (the landholders) and to engineer changes so they are put in a far stronger position, one where they may be able to view the disruption to their lives as an opportunity.

Landholders should be granted a **'Protected Minimum Offer' (PMO)**.

The PMO should specify that: Should a mining approval be granted over a property to commence operations the proponent must make a minimum offer of three times (suggested figure for the purposes of this discussion paper) an independent valuation of the whole contiguous property.

Three times face value is the author's suggestion only, but the PMO should be of such a value that for the average business would view the advent of mining on their property as an economic opportunity.

By offering a PMO of three times the market value the landholder knows from day one that they will be forced to accede to the rights of the state, as is the case at the moment, but they will also know that their family farming business wherever it is chooses to relocate will be significantly enhanced.

The reason for this may not be immediately obvious to all, but the market is a very good tool for measuring the productive capacity and profitability of any given property or region. Thus if we again take the example of the Hillside mine on Yorke Peninsula that the land on the proposed site is probably worth around \$6,250/ha (\$2,500/ac), twenty kilometres away at Maitland, in what is recognised as the best land on YP, land is bringing close to \$15,000/ha (\$6,000/ac).

So a farmer relinquishing 1000ha (2,500ac) at Hillside would receive three times the value \$18,750/ha (\$7,500/ac) or around \$18,750,000 and be in a position to buy 1250/ha in the Maitland area. More land, in a far more favoured area being a significant upgrade of investment.

Alternatively the farmer could relocate to an area of similar value and simply buy three times as much land. The leap of tripling a family investment in farming in one move would be a very attractive offer to most farmers.

Reaching a situation where landholders are at least willing, if not enthusiastic to relinquish their properties, would take much of the heat out of the local arguments and while others may not welcome the development, without a directly interested partner the protest would be greatly diminished.

The underlying strength of this approach is that it delivers certainty to both the landholder and the mining entity. Landholders know they will be generously rewarded (a tripling of wealth), but it must be made clear that if the mining entity passes every other test then they have the right to purchase on those terms.

Both parties could then largely dispense with expensive negotiating and legal processes, farmers could continue to invest in their properties while miners developed a case for mining on the premise that if the project proceeds, for every dollar they have invested they will receive three. The miners would have a very clear path of compliance and tight estimates on net cost of land acquisition. People should not assume that this 'insurance' would be a green light for farmers to over-invest judging their property likely to subject to a PMO,

because there is never surety surrounding mining proposals and if the project does not go ahead they would be left holding poor investments.

Various alternatives remain for land management on the excess land purchases. Landholders may choose to remain, selling only the land directly required for mining, although this would seem an unlikely circumstance given the potential for a very high priced land sale. Another alternative may include the miner leasing out the unaffected parts of the property for agricultural purposes, possibly even to the original landholder, or they may even elect to sell those parts of the property with the new owners being fully aware that they would be accommodating a mining operation within the boundaries of the original leases.

### **Others Indirectly Affected**

This brings us to the neighbours, those who live alongside a mine but whose land is not required for the mining operation. It is perhaps the most difficult issue and notwithstanding the comments in the section dealing with environmental approvals which should ensure that impacts on neighbours are minimal, it is likely a fair case can be mounted that their lives are likely to be significantly impacted and this too should be addressed.

The best answer here is to implement a policy of **minimum set-backs** which the author suggests should be one kilometre from the mining activity.

It would seem overly onerous and a significantly unfair penalty to enforce the PMO as proposed for landholders directly affected on the mining company, particularly the compulsion to make an offer on the whole contiguous land holding. However it would seem to be a fair compromise if the company were to make a comparable minimum offer on the affected paddocks; that is, those that fall within a kilometre radius. The cash injection would then open up a range of opportunities to the landholder including re-location, extra land purchase in the local area or even entering into an agreement to keep farming the same land, but they would be guaranteed that they need live and farm no closer than one kilometre to the mine and highly likely to be significantly further. In any case they would negotiate from a position of much greater strength.

### **Change the Dynamics**

Essentially the changes proposed are aimed at granting far greater recognition of the land-holders rights and potential losses in the case of mining occurring on their property. Bringing them to a position of supporting the project largely removes the rallying point for those who are opposed to development at any price.

Increasingly decisions are being influenced by people who have had no long-term interest in rural production but are part of a significant population that have come to live amongst us as 'tree and sea changers'.

**Author's Comments**

The proposed method of dealing with the interface between mining and agriculture will not please all parties, but given the undeniable right for the people of the state to access their wealth, the proposal significantly increases the bargaining power of the landholder and gives them the opportunity to receive a guaranteed share in the new wealth generated by the change of land use. I consider it a chance to make a genuine advance in the way that these things are currently negotiated.

As explained in the paper the 'three times' figure as the base for the PMO is just my best guess, some may think it too high, others too low, but we should be aware that there are no cheap ways to establish new mining enterprises and do not want to get to the position where South Australia is abandoned as a potential mining target because it has become too costly to do business. I estimate that the extra costs incurred by the mining entity in meeting the 'three times' figure are likely to be largely off-set by the certainty offered, the shortening of time-frames and the subsequent slashing in negotiation costs.