YORKE PENINSULA LAND OWNERS' GROUP

Submission in response to

The review of the *Mining Act 1971 and Regulations*

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PART 1: INTRODUCTION: REDRESSING THE IMBALANCE

1. About YPLOG

Since its incorporation in 2013, the Yorke Peninsula Land Owners Group, comprising over 300 members from a broad cross-section of the Yorke Peninsula community and beyond, has been actively working to

- Help protect agricultural land on YP from invasive, open cut heavy metal mining, and by so doing:
- Help protect the health and well-being of local communities and
- Help protect the diverse and sensitive environment of Yorke Peninsula, including the marine life of Gulf St Vincent.

This submission is based on our members' first-hand experience of the current injustices, failings and limitations of the Mining Act 1971 and its regulations, as well as the lack of rigorous and accountable decision-making and monitoring/regulation by Government.

Contrary to the Discussion Paper's positive view of how the Mining Act is currently working, we believe the present system for approving and regulating mining in this state is fundamentally flawed.

In this submission, we will argue that DSD is failing to deliver on virtually all of the *Principles of Effective and Efficient Regulation* it purports to follow (Discussion Paper p.7) – e.g. effectiveness and efficiency, accountability, enforcement, engagement with communities, fairness and equity, timeliness, transparency inclusiveness and so on.

We will advocate changes the Government should be willing to introduce if it is serious about achieving a ''fair and balanced" legislative and regulatory framework.

The central theme of our submission is the need to redress the imbalance between the mining industry and the rest of the community at every stage of the process to give landowners and local residents a real say in what happens to their agricultural land, their environment and their quality of life.

2 A flawed Review Process

Lack of independence

- The fact that the review is being conducted by the Department of State Development is not acceptable. This Department, via its Mineral Resources Division, is the lead agency for promoting exploration and mining and reports to the Minister for Mineral Resources and Energy whose very strong support for the mining industry is well documented. The fact that royalties "*form the main income stream*" for the department (Discussion Paper p 20) is an added incentive to "grow" the mining industry without due regard for other sectorial interests.

- DSD therefore lacks independence and objectivity and provides little optimism that this review will achieve its stated intention to identify amendments that "*are fair and balanced*" (Discussion Paper, p 7) and accurately protect the needs and rights of farmers, local residents or pre-existing industries – notably agriculture and tourism.

Inappropriate timing and undue haste

- The timing of this Review in late 2016 when most people were gearing up for Christmas and when farmers were in the midst of the busy harvest period has become almost standard practice for this Government. A similar timing was chosen in 2015 for the release/public consultation of the Copper Strategy and the Multiple Land Use Framework. This strategy seems designed to minimise input from those communities and individual landowners most directly affected.

- The short public consultation period, initially limited to about 4 seeks but later extended by several months due to public pressure, is totally inadequate. The *Mining Act* has not undergone an extensive review for 45 years. Whatever changes result from this current exercise will potentially remain in place for another 45 years. It is therefore incumbent on the Government to ensure the Review is conducted in a careful, considered and fully consultative way rather than rushing it through, as seems to be their intention. What we have is merely a semblance of community consultation, giving the impression that the objectives the government wants to achieve from the Review have already been pre-determined.

No clarity re subsequent consultation

- To date, the government has failed to explain whether it will seek further public comment prior to tabling a Bill in Parliament. There have been calls (e.g. at the Maitland GPSA meeting attended by DSD on 2 February 2017) for the Government to release, prior to any Parliamentary process:
    - A DSD document summarising key issues from the public submissions;
    - An outline of its recommended legislative/regulatory changes based on the consultation process and
    - A draft copy of the Bill.

  A period of public feedback should follow the release of each of these documents.

  This strategy would demonstrate the Government's commitment to transparency and community consultation, two factors referred to frequently in the Discussion Paper.

A superficial and biased Discussion Paper

- It fails to acknowledge or tackle the most fundamental weakness in the current system - i.e. the massive power imbalance between the mining industry and the community - and it ignores the public inequity and disadvantage built into every stage of the process.

- As a result, the paper is totally weighted in favour of the mining industry. The primary assumption underpinning it is that mining is desirable, in the best interest of the state and should proceed in all circumstances.

- It skirts around or completely ignores the major criticisms of the system being voiced by communities across the State.

- It fails to confront the most contentious issue facing the Review; ie calls for the exclusion of mining from all agricultural land in SA.

- It fails to come to grips with growing community opposition to mining in settled and highly productive rural regions due to concerns about social, economic and environmental risks.

- It fails to acknowledge the potential negative impacts of heavy metal mining in rural and settled regions of the state on the viability of the pre-existing industries or the well-being of local residents and communities.

- It fails to address growing community disquiet about the Department's regulatory performance, especially around monitoring and compliance.

- Instead, it assumes the legislation is working well and simply needs improving. As a result, many of its suggestions for change - such as promoting early negotiation between landowners and miners, improving transparency and information flow or using simpler language that people will understand etc. – fall well short of the major rethink needed to guarantee a more balanced, equitable and just system that will operate in the best interests of the entire South Australian community, not just the mining industry.

- The overall impression is that this exercise is not intended to be a comprehensive "warts and all" review of the legislation and regulations but one designed to facilitate the Government's well-documented strategies for the expansion of mining across all regions of the state.

Changes Required

- *"Responsibility for the Review must be transferred to a completely independent body as per calls from Grain Producers SA.*
- *With the appointment of an independent review body, the entire process should be restarted:*
    - *A new Discussion Paper must be prepared, which acknowledges and investigates the considerable landowner and community disadvantages inherent in the current system in an unbiased, balanced and transparent manner;*
    - *This must be followed by a new round of public consultation with appropriate timelines; and*
    - *All key findings from the Review Panel must be circulated to the community for further discussion before any recommendations for legislative/regulation review changes are submitted to Government.*

PART 2: REDRESSSING THE IMBALANCE: AGRICULTURE AND LAND ACCESS

SECTION 2.1: EXEMPTION OF ALL AGRICULTURAL LAND FROM EXPLORATION/MINING

1 Introduction

- Coming as it does on the heels of the Copper Strategy and the Multiple Land Use Strategy, YPLOG believes that a key aim of this Review is to free up access to agricultural land for mining by removing existing (albeit weak) protections now available to farmers while introducing new measures to water down their rights even further. The Discussion Paper itself asks: "*What opportunities are there to improve entry to land processes"* (p. 28), indicating that its focus is on making access to land for miners easier and simpler, not about protecting farmers' right of veto.

- This view gains support from
  - previous statements from DSD (for example, the public comment from the Deputy CE of DSD that "*access to land is the Government's number one, two and three priority" (The Advertiser, 10/5/14; 69)* and
  - the fact that the Review is being conducted by the *Resource* ***Land Access*** *Strategy Branch* within DSD.

- *Access to agricultural land* is the most contentious issue confronting this Review, with the depth of anger against the present land access system finding expression in
  - the growing number of landowners across the state exercising their rights under S9 of the Mining Act to refuse to sign a waiver of exemption
  - The formation of oppositional groups across the state, such as YPLOG, Stop Invasive Mining Group, Limestone Coast Alliance Group etc.
  - the plethora of newspaper articles with headlines such as "Battle heating up over land access" (The Advertiser, 10/5/14) and
  - Major public protest rallies and meetings.

- This movement has obviously caused the Government and the mining industry considerable angst and is an impediment to the achievement of the Government's expansionist plans for the mining industry, including its much-vaunted Copper Strategy.

- Yet, as already noted, the Discussion Paper chooses to ignore this widespread discontent with current land access processes. Instead, it argues the present system is working well:

  - *A robust land access regime is currently in place that …. ensures the correct balance between the rights to extract minerals and landowner and conservation interests (p 20)*
  - SA's mineral land access is "*recognised as one of the best access regimes in the world, because it tries to strike a fair balance between the rights of landowners and our collective rights as South Australians (p 23).*
  - *The exempt land framework under the Mining Act has been working well at striking the right balance around land access for over a century and … is fairer than the frameworks used in other jurisdictions (p 29)*

- In line with this, the Discussion Paper clearly sees no need to overhaul the current system. Instead, it focuses on

- the need for ‘’*a leading practice, open and transparent land access regime that promotes early engagement with communities for all projects*” (p. 23)
- “*further improve[ing] transparency and land access engagement, negotiation and court resolution processes”*
- Encouraging “e*xploration and mining companies and communities [to] work collaboratively together from early on. ‘*

- These strategies are totally inadequate.

2. Why the current system has failed

- The first Mining Act passed in South Australia in 1893 declared agricultural land exempt from mining/exploration, thereby recognising the critical economic importance of this industry to the fledging state and the need to protect it. This exemption has been retained in every subsequent Mining Act and agriculture continues to be the largest industry in SA.

- However, over the decades the protections offered by S9 have been steadily watered down, particularly with the insertion of S9AA in the *Mining (Miscellaneous) Amendment Act* 2011.

- This amendment provides for the waiving of the exempt status of agricultural land either by
  - the landowner themselves agreeing to give up their rights; or
  - Via the company seeking a court order to waive the exemption if the landowner refuses to do so.

- Both methods of obtaining waivers have failed to protect agricultural land.
  - *Farmers right to refuse:* YPLOG has obtained extensive feedback from farmers indicating that many of those who have signed waivers of exemption have done so;
    - Without knowing they have the legal right to refuse
    - Often under considerable pressure and coercion from the company;
    - Without understanding the potential long-term impact on their farming business (especially if an exploration waiver results in a full scale mining operation)
    - Without consulting their neighbours about potential impacts on their land (a situation exacerbated by company insistence on negotiating with each farmer individually, rather than as a group)
    - A sense of powerlessness to stand up to a mining company; and
    - A fear of being taken to court– a threat frequently used by companies.

  - *Court decisions* - all such cases brought before the Warden’s Court resulted in a ruling in favour of the company, with the court ordering that the exemption be waived. The only test trial so far heard in the ERD Court has resulted in the same outcome. (See later discussion) Farmers therefore have no confidence that a court will rule in their favour and, if threatened with being taken to court, are likely to capitulate and sign the waiver.

- S9AA has therefore served to completely undermine and subvert the intention of S9.

3. Need for full protection of agricultural land

- The Mining Act must guarantee absolute protection for the remaining 4.3% of South Australia's valuable agricultural land. All such land must be declared exempt from exploration/mining involving mineral ores.
- This approach accords with GPSA's Mining Policy released in late 2015, and reflects growing endorsement of a similar approach at a national level – as evidenced, for example, by the Deputy Prime Minister who has stated: "I've said quite clearly – and I've said the same since 2009 - that you shouldn't have mining on prime agricultural land" (ABC Q&A, Monday 6 June 2016).

4. Why agricultural land should be exempt

The importance of agriculture to the South Australian economy has been well documented and will, no doubt, be canvassed by other submissions to this Review.

However, a brief cross-section of published statistics is provided below.

Comparative land values

- The debate re coal mining on the Liverpool Plains in NSW has focused on the region's status as prime agricultural land. Land values in that region therefore provide a benchmark against which SA's agricultural land can be assessed.
- According to GPSA's analysis of land values in SA compared with this NSW region *(*GPSA Newsletter July 2016) found that:
    - Liverpool Plains has been valued
        - at $2,900/ha. gor rural mixed farming and grazing land and $1,750/ha. for rural grazing land (*NSW Valuer General's 2015 report on land values*)
        - with an average value of $3,752/ha. *(Rural Bank's Australian farmland values 2015 report)*
    - In South Australia,
        - many parts of the state's farmland is valued at between $4,000 /ha and $10,000 ha. (SA Valuer General) while
        - the average values on Yorke Peninsula have increased from $2,000 /ha in 2001 to $8,000 /ha in 2013.
- These figures, according to GPSA, show that a "significant area of agricultural land in South Australia is valued at similar or in excess of the value of the land on the Liverpool Plains "and therefore merits complete protection from mining. This is particularly true of Yorke Peninsula where land is now worth between $5,000 and $17,500 per hectare.
- Yet almost 90% of Yorke Peninsula is now covered by exploration licences, and the first of what may be many more open-cut heavy metal mines has now been approved by the State Government at Hillside.

From mining to dining *- agriculture's* ***contribution to the State's economy***

Following the end of the mining boom, the Australian economy is now transitioning to other industries. Agriculture is key to this, with growth in this sector surging in recent years.

- According to the Australian Bureau of Agricultural and Resource Economics and Sciences, agricultural growth increased by **27.6%** in 2016, following a record harvest in every state.

- While agriculture, the traditional driver of the economy, enjoyed a double digit leap, mining grew by just 4.6%. Retail struggled, while manufacturing and construction went backwards.

- Agriculture's average contribution to the economy increased 10-fold in the 3 months to December 2016.

- The value of Australia's agricultural sector is expected to reach $63.8 billion dollars in 2016/17, with the total value of farm exports expected to reach a new record of $48.7 billion.

- The strong performance of the Australian agricultural sector was mirrored by South Australia's own food and wine revenue which reached a record $18.64 billion in 2016/17.

- In South Australia alone, 3400 jobs have been created in this sector in the 12 months to December 2016.

- Total overseas exports of South Australia's food and wine increased by $6 million (or 0.1%) to reach $5.22 billion (or 45% of total merchandise exports).

- Finished (or processed) food and wine exports increased by $144 million (or 4%) to $3.4 billion. This is on track to reach the $3.6 billion in the 2016–17 State target.

South Australian Agricultural Production Investment (Freehold Land)

- The value of SA's 10.958 million ha. of farmland = $33 Billion '
- Working Capital = $2 Billion
- Livestock = $1.5 Billion
- Plant & Equipment = $2.5 Billion
- FMD's (source ATO) = $0.9 Billion
- This gives a $40 Billion total agricultural investment in SA on Freehold land only built up over 150 years. (GPSA presentation, Maitland, 2 Feb 2017.)

More evidence of agriculture's importance: South Australia's record-breaking harvest, 2017

See attachment below: THE ADVERTISER, 31 March 2017

Farmers bank billions after bumper crop

RENATO CASTELLO

SOUTH Australian farmers have delivered a record-breaking grain crop despite concerns the state's extreme weather would put a dent in production.

Grain growers harvested 11.1 million tonnes – enough to fill the Adelaide Oval 15 times – which is an increase of 800,000 tonnes on the previous high set five years ago.

The final state Crop and Grain report for 2016-17, released yesterday, estimates the value at about $2.2 billion at the farm gate.

The bumper crop was led by a 6.46 million tonne wheat haul – more than two million tonnes above average.

Agriculture Minister Leon Bignell said SA is now the largest lentil producing and exporting state in the country after yields more than tripled to almost 500,000 tonnes this year. He said farmers had also broken records for wheat, barley and hay.

"It's incredible to see just how much grain our farmers have grown and through challenging circumstances, with the extreme weather events our state has faced," he said.

"South Australia is the largest lentil producer in Australia and, in 2016-17, lentils were the third-largest crop in the state.

"Whether you live in the city or the country, everyone in SA benefits when our farmers produce great crops."

The Yorke Peninsula was the highest-producing region, with two million tonnes of grain – an 800,000 tonne increase on the previous year.

More than 12,000 people were employed in the grain industry this financial year.

Grain Producers SA chief executive Darren Arny said the result was "good news" for most farmers. "Every dollar a farmer earns is going to be spent somewhere back in SA. It's great for the economy," he said.

He said prices for wheat were about $60 down on last year, to $220 a tonne, due to a global oversupply. "We have got significantly lower grain prices; the world has produced a lot of grain," he said. "But grain is non-perishable so there will be some grain stored in the hope that grain prices will go up."

Primary Industries SA grains account manager Dave Lewis said "ideal rainfall" and growing conditions were behind the record crop.

"Of course our high crop yields are also the result of investments farmers are making in innovation, new and emerging technologies and the adoption of smarter farm management practices," he said.

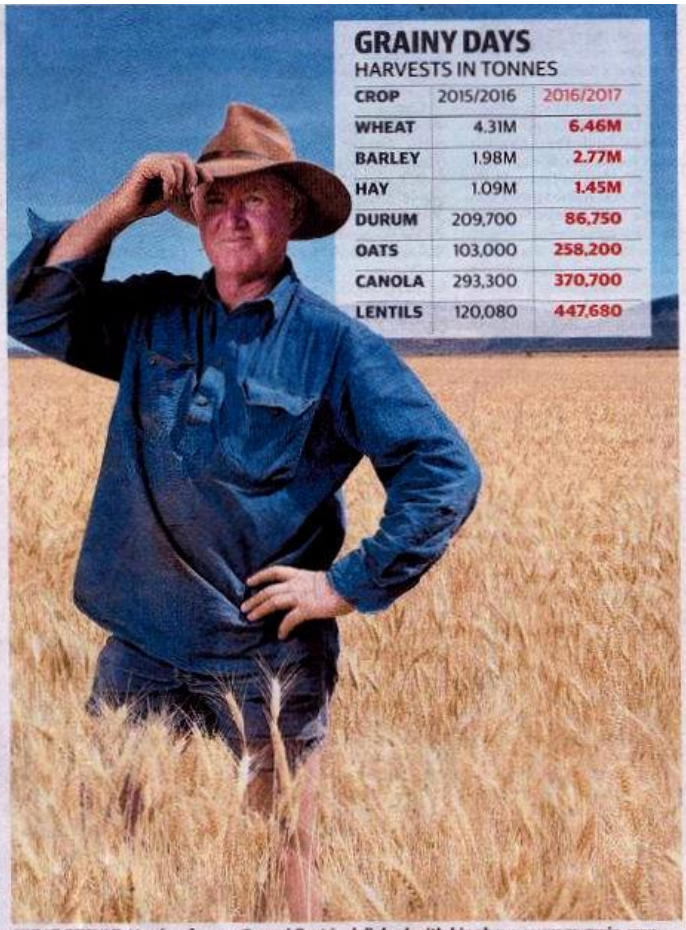
Hawker farmer Gerard Burt, who farms about 100km north of Goyder's line, said his yields had been "above average" although he had seen better years.

"I was still very happy with the yield," he said. "Anything above average is brilliant."

PAGE 63: BREXIT BOOST FOR AGRICULTURE

GRAINY DAYS
HARVESTS IN TONNES

CROP	2015/2016	2016/2017
WHEAT	4.31M	6.46M
BARLEY	1.98M	2.77M
HAY	1.09M	1.45M
DURUM	209,700	86,750
OATS	103,000	258,200
CANOLA	293,300	370,700
LENTILS	120,080	447,680



GREAT RESULT: Hawker farmer Gerard Burt is delighed with his above average grain crop yield, which he is due to harvest. Picture: NAOMI JELLICOE

Changes required

- *The remaining 4.3% of cropping land in this state must be protected from exploration/mining.*
- *The Mining Act must be amended as follows:*
  - *Inserting a Statement of Principle, declaring all agricultural land exempt from mining activities*
  - *Removing S9AA of the Mining Act*
  - *Redrafting Section 9 (1), (2) and (3b) to remove any reference to waivers of exemption.*
- *This will ensure that agriculture remains a vital contributor to the South Australian economy well into the future while at the same time, preserving the mining industry's current unfettered access to the remaining 96.7% of the State.*
- *In addition, many of the problems outlined in the remainder of this submission would be eliminated.*

SECTION 2.2: GIVING FARMERS A VOICE IN THE EXPLORATION PROCESS

1. Introduction

The current exploration regime is failing farmers at every point in the land access process.

The following list outlines just some of the behaviours reported by not just one, but many farmers, during their interaction with exploration companies:

- Entered property unannounced without the knowledge of the property owners until afterwards
- Entered property and performed work without getting appropriate forms signed and without consultation
- When refused entry through front gate of property, entered via gate in back paddock without owners' knowledge
- Arial Surveys carried out without civil aviation permission.
- Did not inform farmers that a signed Form 23 was required. Did not inform them of their right to seek legal advice. Instead, sought and obtained verbal permission which would not have been given had the farmers been aware that their land was exempt from mining.
- Pressured property owner to sign a waiver without explaining the consequences
- Used intimidatory or dishonest tactics to get owners to sign, including constant badgering via late night phone calls, the threat of court action etc
- Did not include an end-date on the Form 23 waiver
- Where waivers were sought from two landowners for the same exploration program,
    - Used misleading tactics – eg telling each landowner the other had already agreed to sign, when that was not the case
    - Refusing to negotiate with the farmers involved as a group, using the adage of "divide and conquer"
- Given verbal approval to undertake activities on a specific parcel of land, but explored on other land owned be the same farmer in a completely different region.
- Accessed property after heavy rainfall without owner's consent, causing damage
- Failed to adequately clean up after completion of exploration activity
- Knowingly dumped tailing from drilling into disused effluent ponds for three years without council approval or knowledge
- Drilled within 400m of a house on several occasions without contacting the owner or obtaining a waiver
- Drilled next to a dam, also without waivers
- Left core samples on side of road. Cleaned up only after numerous complaints from local residents
- Failed to adequately supervise drilling activities on a property, causing damage
- Brought noxious weeds on to a property by not following proper decontamination procedures
- Unruly contractor camps, resulting in threats to nearby neighbours and interference with stock
- Used water for drilling which deprived nearby land-owners and their stock of water
- Drilled on sides of council-owned without council or nearby property owners
- Drilling contractor failed to respect cropping land – treated it as if it were pastoral land
- Failure to abide by activity descriptions as per their PEPR document, including
    - Much greater number of vehicles in paddock than stated
    - Drilling in paddock outside exempt land boundary
    - Failure to implement appropriate firefighting procedures
    - Continued drilling on fire ban day

Most of these behaviours went unreported for reasons discussed later in this submission.

2. What is currently lacking - an overview

- Prompt and ready access to all relevant information, including
  - information on landowners' legal rights, especially as they pertain to exempt land status and complaint mechanisms;
  - legislative and regulatory procedures/obligations that companies must adhere to
  - full details of all activities to be undertaken as part of an exploration/mining operation
  - access to all relevant company-generated reports and documents as they pertain to the landowners property
  - who to go to for more information and advice

- Sufficient time for the landowner to make informed decisions based on full information.

- Direct participatory role for impacted landowners and their neighbours at every point in the process. The current system relegates farmers to a passive role as the recipients of the limited information companies choose to give them, not as an active decision maker with the right to control and influence what is going to happen on their land. The process disempowers landowners and gives the mining company the upper hand in any negotiations.

- Direct interaction with/contact the regulators, especially in relation to complaint procedures

- Independent information/appeal/complaint mechanisms for landowners and local residents – see later discussions on Independent Landowners Advisory and Advocacy Committee and Mining Ombudsman.

The following discussion provides more in-depth consideration of each stage of the exploration process and identifies specific failings and recommended changes.

3. Exploration licences

Granting a licence

> *"We must ensure that the best explorers are given the best opportunities to explore appropriate ground…"* (Discussion Paper page 77).

- At present, however, it seems exploration licences are issued on a "first come, first served basis".

- As a result, when commodity prices were high a number of junior companies were formed and granted licences, with seemingly limited financial resources or mining experience. When the mining boom ended, some of these companies ceased operations and relinquished their leases. However, by that stage, their activities had caused considerable stress and problems for the landowners sitting within those ELs.

Changes required

- *The granting of exploration licences must be via a competitive process similar to that which seems to be used for Exploration Release Areas (p 77).*

- *There must be a list of criteria (publicly available) on which such decisions will be based. At the least, this should include an assessment of the company's financial viability and prior track record in exploration/mining to ensure they can meet their social and environmental obligations. As stated on page 46 of the Discussion Paper – the Government should obtain evidence that the operator is capable and competent.*

- *Any evidence of prior compliance breaches by that company anywhere in Australia would be automatic grounds for not granting a licence.*

No exploration (mining) licences to be issued in Coastal Protection Zone

- 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 a coastal zone extending 800 metres inland from the high water mark.

- However, according to Rex's Mining Lease Proposal (section 4.1.1.5) in 2010, the company sought and was granted a variation of that Proclamation. According to this variation, land covered by Rex's Exploration Lease 4514 was excluded from the coastal reservation. This allowed the Government to grant the company an exploration licence over a 25 km stretch of coastal land extending from the tip of Black Point to just north of Tiddy Widdy Beach. It includes sections of the Ardrossan and Pine Point townships, and the whole of the holiday settlements of Black Point, Rogues Point, James Well and Tiddy Widdy.

- A six km stretch of that coastal strip is now part of the Hillside Mining Tenement, and will be covered by a massive waste rock dump and a realigned St Vincent's Highway, parts of which will be within less than 50 metres of the cliffs.

- In granting this variation, the potential threats posed to the environmental integrity of the coastal reserve and Gulf St Vincent were not, it seems, considered.

- Despite claims by DMITRE that it had provided an opportunity to stakeholders for comment, our inquiries indicate public consultation was minimal with only one farmer indicating he had been consulted.

Changes required

- *The exempt status of all land within the coastal protection zone must be made "water tight'', with no government authority to vary it.*

Informing land owners when exploration licence is granted

- At present, when a new exploration licence is granted, that information is not widely circulated. Although details are, for example, uploaded onto the SARIG website and an advertisement placed in local newspapers, very few (if any) farmers know where to look for such information, or even that they need to look.

- The information provided – particularly pertaining to the geographic location of that licence – is not in a form that is easily translated to on-the-ground farm locations.

- For many farmers, the first they know about their property sitting within an Exploration Licence is a telephone call or knock on the door from the mining company seeking access to their property. They have no understanding of what it means for their land to sit under an EL, or what to expect.

Changes required

- *When a new Exploration Licence is granted, each farmer/resident within that licence must receive formal notification from DSD, with full details about the exploration company, the minerals being sought, and any conditions associated with that licence (eg length of tenure).*

- *It should also include contact details for a DSD representative if farmers have any questions.*

- *Farmers must be informed promptly of any change to the status of the EL, such as extension, renewal, relinquishment, change of company allocated that EL.*

Terms of Exploration Licences

- The Discussion Paper (page 79) suggests a longer period of initial grant for an exploration licence – from the current 5 years (for an initial licence and one renewal) up to potentially 20 years or longer.
- **T**his suggestion is totally rejected by YPLOG. Again, it shows no understanding of or consideration for the farmers sitting under those exploration licences.
- The danger of "land banking" would be significantly increased.
- Surely if an area has not been fully explored within five years, then either the company is failing to fulfil its responsibilities or no minerals exist on that site.

4 Negotiating with company re land access

A Case Study:
Background: Two years earlier the farmer had signed a waiver of exemption allowing the company to undertake exploration activities on his land. At that stage, he indicated to YPLOG he was unaware of this rights. When approached by the company one year later, he refused to sign a waiver. The company did not pursue the issue.

Recent developments:
- *Company Letter 1: several months ago, the farmer received a letter requesting access to land for further exploration purposes.*
    - *It stated: if the landowner was reluctant to agree to access, it would be necessary for the company to pursue the matter through the courts and, based on past decisions, the company expected the court would rule in its favour.*
    - *The letter included an offer of compensation with an additional payment for agreeing to the waiver. However, that extra offer closed in 18 days.*
    - *It was accompanied by a Form 23, which contained a very brief description of the activities intended.*
    - *The farmer was given one week to consider the matter.*

- *The farmer responded in writing a week later asking for a copy of the PEPR and details of the previous court outcomes. He also indicated that the time provided by the company for him to reach a decision was inadequate.*

- *Company letter 2: This arrived nine days later, this time from the company's lawyer.*
    - *It indicated a copy of the draft PEPR was enclosed*
    - *The offer of additional compensation was extended by one week, but no information was provided on past court outcomes.*
    - *It stipulated that if a counter offer had not been received within two weeks, the company would refer the matter to court.*

- *The farmer chose not to respond.*

- *Company letter 3: 19 days later, the company's lawyer informed the farmer the company was taking the matter to the ERD Court, with the first hearing scheduled for 2 weeks hence.*

Key concerns:

- The first approach from the company contained the threat of a court hearing while the next two letters came directly from the lawyer. The farmer, who had no prior experience with the court system, found this quite intimidating.

- At that stage, no case involving a waiver of exemption had gone to trial in the ERD Court, so no precedent had been set by that Court. Previous cases before the Warden's Court had ruled in favour of the company, but the company did not clarify this.

- The draft PEPR was submitted to DSD for approval on the same day a copy was ostensibly provided to the farmer. This raises the question: had the farmer's request for a draft prompted the preparation of the PEPR?

- Both the waiver and the PEPR provided insufficient information on the intended exploration activities for the farmer to assess the likely impact on his property. For example, neither document identified the exact location of the proposed drill holes.

- The time between the initial request for a waiver and the final letter notifying the farmer of a court hearing was approx...30 days – an inadequate amount of time for the farmer to make contact with and obtain advice from a lawyer with expertise in this area.

This case is by no means a-typical.

Changes required

- *Adequate time to seek legal advice and obtain all relevant information*
- *Forms 21, 22 and 23 to be provided at time of initial contact, with clearly specified commencement and end dates*
- *A draft copy of the PEPR must be provided automatically with Form 23 with full details of the activities planned, including exact locations of drill holes (see below for further discussion on PEPRs.).*
- *Restatement of the farmers legal rights*
- *Re the conduct of negotiations:*

- *If more than one farmer is involved, the company must seek joint consultations/discussions with those farmers, not meet with them one at a time. Farmers, though, retain the right to enter into individual negotiations if they choose.*
- *Absence of intimidation, coercion: Negotiations must be conducted in a professions, non-threatening, non-intimidatory manner. Any threat or attempted coercion by a company to get farmers to sign constitutes immediate grounds for complaint to DSD*

- *Record keeping: the company must provide minutes, notes of each meeting/conversation conducted by phone/in person and obtain sign-off by the farmer.* Too often farmers have been told one thing in conversation only to have the company deny it later.
- *If the farmer agrees to grant a waiver, the farmer must sign a legally valid letter verifying that, in making the decision, (s)he was fully informed of their rights, understand what they are agreeing to (including possible long term consequences of having a fully developed mine on their property), have consulted a lawyer, and have not been subject to any coercion by the company.*

- ***DSD's role**:*
  - *Before endorsing the exploration activity and signing off on the PEPR, the Department must impose an adequate bond, and ensure the company has sufficient public liability. The current requirement of $20m liability is totally inadequate, especially if the activities (which usually occur on YP in summer after harvest) start a major fire similar to that of the Pinery Fire in 2015. According to page 46 of the Discussion Paper, these tools are currently available to DSD. They must use them!!!*
  - *Any evidence of prior compliance breaches by that company anywhere in Australia would be automatic grounds for not granting a licence in the first instance.*

5 Agreement to waive the exemption; involvement of third parties

- At the present time, the decision to sign a waiver of exemption is restricted to the two key players - the farmer and the company. However, such decisions affect not just the immediate landowner but also his/her farming neighbours and residents of nearby communities. For example, dust and noise generated by drilling equipment, increased vehicle movement etc can impact those living in nearby households while from a farming perspective, there are issues associated with disruption to livestock, vehicle movements, increased threats from fire and weed infiltration.

- A farmer's decision to waive the exemption could also have long-term consequences for his neighbours' security of farm tenure if the exploration program subsequently leads to a full scale mine. For example, in the case of the proposed Hillside mine on YP, the company initially obtained waivers of exemption from three farmers. The resultant exploration program led to the approval of a 3,000 hectare mining tenement, which subsumes land owned by five other farmers. These farmers now find themselves in an untenable position through no decision of their own.

- YPLOG therefore strongly support the Hon. Mark Parnell's amendments in his *Mining (Protection of Exempt Land From Mining (0peraionts) Amendment Bill* 2014, which gives those who are likely to be impacted by the exploration activities the right to know what is happening in their local area, and to have their concerns taken into account.

Changes required

As per the Hon Mark Parnell's Second Reading Speech, the Bill provides for the following;

- *The mining company has to advertise the pending waiver agreement in the local newspaper and on the DSD website.*
- *This would be followed by a two week objection period.*
- *During this period, anyone who believes they would be affected by the proposal – including neighbouring landowners, local residents and persons living in the general community – have the right to lodge an objection.*
- *This objection gives them the right to become parties to any subsequent proceedings in the ERD Court involving the waiver.*

6. Exploration PEPRs

- The PEPR document is crucial to the farmer's decision to sign a waiver, and later, in monitoring the company's on-ground operations and determining its level of compliance with the conditions of entry.

- The current process is flawed. Problems include:

    - The fact farmers have to request a copy of the PEPR, when most are not even aware they exist. The company does not have to automatically provide a copy.

    - The lack of specificity, particularly in terms of the location of the drill holes. One PEPR cited by YPLOG simply drew an oblong circle in the middle of a paddock to indicate where the drilling would occur. Another PEPR identified the location of the Stage 1 drill holes but not Stage 2, arguing that this would be determined after the Stage 1 results had been analysed. The Discussion Paper's argument that companies are not in a position to provide full information up front is unacceptable.
        - It makes it impossible for farmers to make an informed decision about the likely impact of the program on their farming operation and
        - It reduces the company's level of accountability and likelihood of non-compliance.

    - The lack of farmer consultation and input into the PEPR.

Changes required

- *A draft copy of the PEPR must be provided at the same time as Forms 21, 22 and 23.*
- *Each PEPR must contain sufficient information to provide the farmer with a full understanding of what will occur on his property during the exploration. This must include a map showing the specific location of each drill hole.*
- *Before deciding whether to sign:*
    - *he/she must be consulted about and have direct input into the draft PEPR*
    - *Prior to the draft PEPR being forwarded to DSD, the farmer must sign a legally valid document either*
        - *Affirming he/she has had input into the PEPR and is satisfied with the resultant draft or*
        - *Objecting to/rejecting the PEPR and specifying the grounds for this decision.*
    - *This document must accompany the draft PEPR when submitted to DSD for approval consideration.*
    - *If a farmer rejects the PEPR or has unresolved concerns, DSD must make personal contact with the farmer to discuss the issues.*

- *Failure to obtain the endorsement of the farmer should constitute grounds for DSD's rejection of the PEPR.*
- *A copy of an approved PEPR must be provided to the farmer before any exploration work can commence.*
- *No PEPRs to be approved if the company has non-compliant operations elsewhere in the State or interstate, or other non-compliances under the Act. (Discussion Paper, page 49)*

7. Conducting operations - monitoring and compliance.

There are two major failings in the way current processes are implemented;

- First, the lack of departmental oversight and monitoring during the operation itself and
- The way in which compliance is assessed once activities cease.

These issues will be dealt with under Section 3. Environmental Regulation and Compliance.

8. Establishment of an independent Landowners Advisory and Advocacy Committee

Changes required

- *To help redress the many disadvantages faced by farmers when confronted by exploration/mining companies, a Landowners Advisory and Advocacy Committee should be established.*

- *It should comprise local landowner representatives from each area of the state, backed up by part- or full-time administrative staff.*

- *The Committee should have access to a dedicated environmental/mining lawyer. Whether this would be part-time, full-time or on an as-needs-basis would depend on the workload.*

- *Locally –based representatives from each region would be easily accessible to their constituents, and would be well placed to act as the first point of contact for any farmer wanting support, information or advocacy when confronted by an exploration or mining company.*

- *The role of the lawyer would include:*
  - *Providing legal advice to farmers and other local residents re their rights when dealing with a mining/exploration company*
  - *Liaising with appropriate government departments on behalf of the landowner, especially in relation to complaints*
  - *Assisting landowners in the preparation of relevant written documents*
  - *Maintaining a list of suitable solicitors and barristers with necessary skills to represent the client in the ERD Court*
  - *Assisting in the conduct of any cases before the ERD Court*
  - *Prepare and submit formal complaints to DSD or the Mining Ombudsman and undertake any follow up work.*

- *The Government should provide full funding for this committee, possibly via its very generous tax-payer funded ACE grants, all of which is currently directed to the mining industry.*

SECTION 2.3: ENVIRONMENTAL REGULATOIN AND COMPLIANCE DURING EXPLORATION

Note: this section relates only to exploration activities on YP. In the absence of any mineral ore operations on YP, we have no direct experience ot regulation and monitoring of operational mines. However, a number of issues raised would also be relevant to the operational stage.

1. Monitoring of operations

Page 46 of the Discussion Paper argues that under the current system, the Department has a number of preventative tools, including

- Using authorised officers to gather information and conduct investigations to monitor compliance with the mining Act
- Requesting an independent audit of the environmental outcomes required under a PEPR

There is little evidence that these tools are used. In fact, the list of inappropriate and illegal actions by companies outlined earlier indicate that DSD has totally failed to implement a rigorous regime of regulation and compliance from the initial point of obtaining waivers of exemption through to final compliance reporting to the Department. As a result, ,many farmers and local residents believe that companies can basically do what they like, and are rarely held to account or penalised for breaches.

Key problems

- *Reliance on company self-reports and consequent lack of on-site monitoring:*
  DSD seems to rely heavily on self-reporting by the industry, based predominantly on the company's post-operational compliance report. On site, spot inspections rarely, if ever, occur. As a result, the regulators are not often aware of breaches or inappropriate behaviours by companies.

- *Apparent expectation that affected landowners/neighbours will report breaches:*
  The main responsibility for monitoring what happens on the ground appears to rest with the farmers themselves. This has major limitations:

  - Farmers are not told that primary responsibility for "keeping the company honest" rests with them. Nor do they have the necessary expertise or knowledge to undertake this task. For example, how many farmers know that a company is not allowed to drill within 400 metres of a place or residence or dam? They are also time poor, have a large agricultural business to manage, sometimes with land spread across a considerable area, and are therefore not in a position to watch what is happening on a regular (preferably daily) basis.
  - Nor do farmers have access to all information needed to determine whether the company is adhering to its proposed plans as approved by DSD.
  - Until recently, landowners did not have the right to receive a copy of the company's PEPR and so had no idea what conditions had to be complied with.
  - Even though they can now request a copy, this is not always helpful because of the lack of specificity in some PEPRs. For example,
    - one PEPR cited by YPLOG did not specify the intended location of the drill holes. Instead, a broad circle was drawn on the paddock in question with the statement that drilling would occur within that. (The company subsequently drilled outside that designated area). This PEPR was approved by DSD.
    - Another PEPR identified the location of the 40+ holes to be drilled within the first phase of exploration activity, but not the location of the holes planned in the next phase of

drilling. The company argued that the location of the second round of holes would be determined only after the Round 1 results had been analysed. This leaves the land-holder (and DSD) with no basis for assessing compliance. This PEPR was approved by DSD.

- If the landowner is aware of a potential breach or is unhappy with certain company behaviours, (s)he usually has no idea who to report that breach to, other than the company itself. As a result, most issues go unreported.

- *DSD responses to complaints:* YPLOG is aware of a few occasions when a complaint was made to DSD. In all of these, the landowner's concerns were either dismissed or an assurance given that the company has been spoken to, regretted the breach, and had changed its practices to ensure it wouldn't happen again. Rarely does a DSD representative contact the landowner involved, let alone actually do an on-site inspection.

- When the issue is raised with the company, they usually have an excuse as to why the activity in question is permitted. Again, landowners usually lack the expertise and knowledge to challenge this explanation.

- The Discussion Paper does not provide detailed statistics on complaints made to DSD, how that complaint was investigated and the specific outcome of that investigation. Its statement (page 65) that "*100% of environmental directions issued to explorers and operators were complied with in 2015-16"* is meaningless. . It is this level of accountability that the community expects from the regulator. In the absence of such data, the view that the regulators are failing in their duty of care to landowners will persist.

Changes required

- *DSD must, as part of the information package discussed earlier, provide farmers with*
  - *Details on how to lodge complaints, including a copy of a pro-forma incident report that may be used for that purpose*
  - *An explanation of how DSD will respond to any complaint, including likely response times, list of possible penalties and an offer of a personal meeting with the farmer, including a site visit if requested.*
  - *An agreement to provide all findings to the complainant*
  - *Details on an appeal process if the complainant is not satisfied with the outcome.*

- *During the course of an exploration activity DSD must:*
  - *Undertake regular on-site, unannounced inspections*
  - *Contact the landowner on a weekly basis (by phone, email) to ensure no issues have arisen.*

- *As part of this Review Process, DSD must publish detailed statistics on*
  - *the number of complaints received from landowners or others per region*
  - *The number of complaints identified by DSD itself per region*
  - *For each complaint:*
    - *The nature of the complaint*
    - *The nature of the investigation – eg on-site inspection, contact with landowner, discussion with company, assessment of formal documents (PEPR etc)*
    - *The outcome*
    - *Whether a penalty was imposed and the nature of that penalty.*

2. Post- operation compliance reports

- The Discussion Paper (page 46) states that a company is required to submit a compliance report within a stipulated 12 month 'reporting' period. In YPLOG's experience, this time frame is completely inadequate. It means one may not be submitted to DSD until many months after the completion of the exploration activity. This is often too late to identify or respond effectively to any breaches or assess environmental impacts.

- These reports are not public documents and YPLOG understands it appears they are rarely made available either to the landowner on whose land the activity has taken place, let alone to neighbouring landowners or local residents. Hence, the capacity to challenge the content of those reports is virtually non-existent.

- Input from the landowner is minimal or non-existent. At best, a company may contact the farmer at the end of the exploration activity and simply ask whether (s)he has any complaints or concerns. There is no guarantee these complaints will be included in the report.

- The report is based on the company's self-assessment of the extent to which they have met their obligations and conditions. We understand there is a pro-forma exploration compliance report which contains a section headed "Compliance with approved programs". Under this, the company is required to report on
    - whether a specific outcome has been achieved (yes/no)
    - Evidence demonstrating compliance with outcome.

Examples taken at random from approved compliance reports:

Outcome required:	*Measurement criteria:*	*Outcome achieved? Company response*	*Evidence demonstrating outcome achieved?*
No introduction of new species of weeds and plant pathogens"	*"Provide statement confirming that: - Vehicle logs kept during exploration program - Photographic evidence that no new weeds were introduced.*	*Yes*	*All vehicles and equipment were washed down prior to entering exploration site. No weeds identified by on-site inspection and no complaints received from landowners.*
No increase in background radiation levels	*Radiation levels post-exploration consistent with pre-existing background levels*	*Not applicable*	*No radioactivity intersected in drill cuttings*

- Does anyone check the veracity of these statements?

- The compliance report pro-forma also includes a 'Complaints' section where the company is required to report
    - the date of the complaint (if any)
    - nature of complaint
    - Resolution date
    - How complaint was resolved.

  However, our experience indicates the landowner involved is rarely, if ever contacted to determine whether he/she is satisfied with the way the issue has been resolved.

- Landowner feedback received by YPLOG indicates DSD does not undertake its own assessment of the veracity of the information contained in those reports. Importantly, DSD does not contact the farmers involved to determine if they are satisfied with the company's compliance levels.

- Generally compliance reports seem to be a"tick and flick" exercise, which fails to provide any meaningful accountability.

3. Case study of DSD's failure to regulate

- During a 2014 drilling program in northern Yorke Peninsula, an exploration company drilled three holes within 400 metres of a nearby place of residence contrary to Section 9AA of the *Mining Act 1971*.

- Although it had obtained a waiver of exemption over the paddocks in question, it had not obtained a waiver of exemption from the owner of a neighbouring residence.

- Although the landowner was aware of the breach, he did not know how to lodge a formal complaint, or who to direct it to.

- Information on this breach only emerged some two+ years later, when the company applied to the ERD Court for a waiver of exemption to allow them to conduct further drilling on the same property.

- At that hearing the landowner referred to the breach in his evidence, and the company admitted to the breach.

- A subsequent complaint from YPLOG to the DSD regulators revealed that
    - DSD was unaware of the breach
    - The exploration company had not mentioned it in its Compliance Report (then referred to as an Exploration Work Approval) which was subsequently approved by DSD.
    - According to the DSD response, at the time the holes were drilled in 2014 the DSD Guidelines then in place (MG10) did not require the company to notify DSD of the breach. Accordingly, DSD accepted the compliance report, and judged the company had achieved its environmental outcomes as outlined in its PEPR.
    - It is not clear to YPLOG that the new guidelines - MG22, which took effect on 1 July 2015 - now require such a breach to be included.
    - Upon receiving YPLOG's response, DSD undertook an investigation which did not include contact with the landowner(s) involved.
    - DSD's response: it noted the company had "apologised" to the landowner involved – implying that this was a significant act. However, this did not occur until almost three years after the event, and after DSD had received the YPLOG complaint.
    - The 'penalty' for this breach?
        - The company is required to provide DSD with a "written response" to the unauthorised drilling – whatever that means.
        - A report detailing changes/actions made to company policies/procedures to ensure such incidents do not occur in the future.

- In sum, a clear breach of S9 of the Mining Act 1971 has seemingly resulted in a 'slap over the wrist'. And none of this would have even come to light if the matter had not come before the court, and the landowner had the opportunity to give evidence.

- Of particular concern is the fact that this breach – although known to the Court and referred to in the Judgement handed down - did not seem to count against the company. The Court still granted a waiver to the same company to undertake further exploration on the same property, despite strong opposition from the landowners.

Changes needed

- *DSD must provide farmers with*
    - *a clear explanation of the purpose of a compliance report*
    - *a contact person to whom farmers can refer any questions or complaints.*
- *A draft compliance report must be completed within 3 months of the completion of the activity*
- *The company must be required to provide the farmer with a copy of that draft report*
- *The farmer must have the right to have input into it, including the right to object to and demand changes to any misleading/inaccurate statements*
- *Adequate time must be provided to allow this to occur.*
- *Any concerns must be addressed immediately by the company*
- *If any concerns are not resolved, the company must include these in the final compliance report referred to the Department*
- *The compliance report must also be accompanied by a signed letter from the farmer indicating his endorsement or otherwise of the report.*
- *If there are unresolved issues, a DSD representative must make direct contact with the farmer to investigate the issues.*
- *Any subsequent investigation must be transparent, undertaken within clearly specified timelines and a final outcome reported to the complainant.*
- *DSD must no longer rely on the company's self-assessment of the outcomes.*
- *No compliance report must be approved until DSD has verified the accuracy of the information it contains. To this end, undertaking regular site inspections during the exploration activity and a final inspection after the company has rehabilitated the site should be mandatory, along with direct contact with the landowners.*
- *In addition, each compliance report must be made public to allow nearby residents to raise any concerns about its veracity.*
- *All compliance reports, once approved, will be published on the DSD website.*

At the very least, DSD must start using the "tools" it claims is currently available to it, including

- *Using authorised officers to gather information and conduct investigations to monitor compliance*
- *Request independent audit of environmental outcomes required by the PEPR*

4. Additional powers required to hold companies accountable

The Discussion Paper (Pages 47 – 50) suggests a number of additional measures to ensure accountability.

Changes required

YPLOG endorses all of the following:

- *Insert condition in PEPR preventing commencement of operations until eg a bond has been paid or a direction has been complied with*

- *Prohibit or delay the expiry of a tenement until all environmental and other obligations have been complied with.*

- *Publicly releasing a notice of intention to surrender or notice of expiry for public comment.*

- *Include in the Mining Act a cluse providing for the pursuit of an operator or management for any environmental damage that has occurred on the site after the tenement has been relinquished*

- *Delay approval of a PEPR or other approvals under the Mining Act if that particular operator has non- compliance operations elsewhere in the state. (YPLOG though, would argue that any outstanding non-compliant issues or a record of non-compliance should be grounds for refusing a company an exploration licence in the first instance).*

- *Increasing penalties. (At present it seems the Government has the power to impose a maximum penalty of $250,000 for failure to comply with a direction within the stipulated time. (How often has such a penalty been imposed? In our view, using penalties already available to the dept, would be a good start.)*

- *Preventing renewals, transfers etc until environmental obligations have been complied with.*

- *Imposing personal liability on directors for company non-compliance.*

SECTION 2.4: THE COURT PROCESS

1 The Environment, Resources and Development Court

- The Discussion Paper's coverage of issues relating to the operation of the Environment, Resources and Development Court fail to tackle the major inequities and limitations of that system and the inequities faced by farmers during the court process.

- In July 2011, responsibility for determining such matters was transferred from Warden's Court to the ERD Court.

- In the 5 or so years since then, very few waiver-related matters have been referred to court. In part, this is due to the reluctance of farmers to face a court hearing. The majority have had no prior contact with the judicial system, and the prospect is often daunting. In addition, there is the added fear that the costs involved will be prohibitive. Many therefore opt to sign a waiver rather than invoke their right to refuse.

- Of the cases dealt with in the ERD Court only one proceeded to trial. This took place in December 2016, when Marmota Energy initiated proceedings against two farmers from Paskerville on Yorke Peninsula who had refused to sign waivers of exemption allowing the company onto their properties for a 4 month drilling program extending into 2017.

- This trial highlighted a number of serious flaws in the court process which weighed heavily in favour of the company and reduced the odds of a positive outcome for the farmers.

    - As the instigators of the court challenge, the company held a significant advantage right from the start. The company's far greater resources, length of time to prepare and familiarity with legal proceedings allowed them to "call the shots".

    - Clearly anticipating the possibility of a court hearing, they had spent what appears to be considerable lead-in time planning and preparing their case. In doing so, they had access to a number of reports and documentation pertaining to their previous and their newly planned exploration activities. Their lawyers were therefore able to submit an extremely detailed affidavit and had both the resources and contacts to enlist a number of expert witnesses.

    - In contrast, the farmers were notified they were being taken to court just two weeks before the first hearing. They had very little time to obtain legal representation, read the company's large affidavit and prepare their response. Because they had not anticipated this outcome,
        - they had kept relatively few records of their prior interaction with the company (eg records of conversations with company representatives),
        - had not previously seen most of the documentation contained in the Company's affidavit,
        - as agriculturalists with no background in mining, lacked the expertise to challenge some of the key evidence and
        - had neither the resources nor contacts to call their own expert witnesses.

    - They were also completely unfamiliar with the court environment and found it highly stressful and intimidating.

- What also emerged during the 2 day trial was the lack of knowledge by legal representatives and the court itself of the complexities and unpredictability of running an integrated cropping/livestock agricultural business and the significant impact on that business of a 4 month exploration drilling program on their land.

- The most telling disadvantage was the constraints placed on the court by S9AA(9). This section makes it clear that the main factor the court has to consider is whether any adverse effects of the proposed operation on the respondent can be addressed through conditions and compensation. The starting presumption is that the waiver will be granted – that it is simply a matter of identifying appropriate conditions. This reduces the issue to one of measurable operational controls and monetary considerations, and totally ignores the deep seated objections the farmers held about mining on their land.

- The court, it seems, is also precluded from taking into account the long-term consequences for the landowners and their agricultural businesses if the exploration program results in a full scale mine. It can only base its decision on the likely impacts of the specific operation under consideration. Yet it is these long-term consequences which are often of primary concern of the respondents. In the recent ERD Court Trial, the respondents argued forcibly that the exploration company would not be undertaking this work unless they were optimistic of finding sufficient mineral resources to proceed to a full scale mine. And previous experience at Hillside has demonstrated that once that stage is reached, the farmers would be virtually able to do anything to stop it. They would, in all likelihood, lose their farms which had been in their families for generations. However, these concerns, though raised in evidence by the farmers, could not be considered.

- Another indication of the power imbalance between the two parties was the fact that, having decided to waive the exemption, the court exercised its powers under S9AA(8) to hand down a set of conditions and compensation without any consultation from the farmers. Instead, the conditions imposed were based primarily on the original terms set out by the Company in their affidavit. The farmers therefore had no say in the terms under which access to their land had been granted. They had assumed, incorrectly, that once the court had decided to waive the exemption, time would be allowed for them to negotiate conditions and compensation. They believed that to put forward their own set of conditions prior to the court's judgement would have signalled their willingness to capitulate.

- A final concern is that at present, the only two parties to a court hearing are the exploration/mining company and the farmers whose land is required. Owners of farms adjacent to the land in question are completely ignored, as are nearby residents who may be impacted by the operation, via dust, noise, groundwater contamination etc.

Changes needed to ERD Court if S9AA is not rescinded

- *There must be a more comprehensive, legislatively mandated list of factors the court has to take into account in reaching a waiver decision. This should include:*

  - *Type of mineral being sought and relative abundance or rarity. Eg if the minerals in question are abundant elsewhere, then the waiver must not be granted.*

  - *Assessment of the full range of potential social, environmental and economic impacts having regard to:*

- *The direct impacts of this proposed activity on both the respondents and on any neighbours who may be negatively affected (see page …. re affected neighbours to be party to the court proceedings and have their concerns/objections taken into account).*
- *The long term consequences for farmers and local communities if the exploration program in question leads to a full scale mining proposal*
- *The farmer's total investment in developing and building his/her agricultural business over the duration of the family's ownership of the land (which could span generations) compared with the company's investment to date.*
- *Whether the company's rehabilitation plans accord with leading practice, and its ability to fund such rehabilitation*

- *Throughout the hearing, the court must be advised by an agricultural expert from the local region under challenge. That advice must be mandatory – ie not sought at the discretion of the presiding judicial officer – and must carry weight. Failure of the court to take sufficient account of the advice received from the agricultural expert would constitute grounds for appeal.*

- *If the court chooses to grant a waiver of exemption,*
  - *After that decision has been handed down, the matter must be adjourned to a directions hearing to allow negotiations between the two parties to occur, with a final decision to rest with the court only if such negotiations prove unsuccessful.*
  - *Award costs against the party who has initiated the hearing – ie against the company - unless there is clear evidence the respondents have been unduly obstructive. This would remove the current situation where farmers are reluctant to proceed to court because of a lack of finances.*

- *Need for a simpler appeal process. At present, the only avenue for an appeal against the ERD Court is to the Supreme Court – a generally prohibitive option for farmers because of the cost and the time involved to reach resolution. A simpler appeal process is required. An appeal to a mining ombudsman may not be legally possible. However, alternatives should be explored.*

2 ERD Court versus Warden's Court

- Page 35 of Discussion Paper argues in favour of giving farmers and mining companies the right to choose which court to refer a waiver determination.

- The shift from the Wardens Court were the result of Legislative Council amendments in the *Mining (Miscellaneous) Amendment Act 2011.* During the preceding debate in the Upper House, the government made several attempts to defeat this amendment, without success. Now they are "having another go", using similar arguments to those previously rejected by the Upper House – namely that the Warden's Court is cheaper, less formal and quicker.

- However a reading of the judgements handed down in the Warden's Court suggests this court is unlikely to rule in favour of farmers. YPLOG understands that all finalised matters relating to exempt land status in that Court have resulted in judgements that favoured the mining companies. For example:

  - In the matter of Alton, Fowler and Teusner v Maximums Resources Pty Ltd *(Number One) [2009} SAWC 14 (4 July 2008),* the Senior Warden stated:

- *Ï have interpreted the Act in the context that it was intended to encourage mining" (point 35).*
- *"The purpose of the Mining Act 1971 (SA) is to encourage mining and the Warden's Court should allow mining to occur where it can be done so having proper regard to the rights of owners of the land in the terms of ownership defined by the Mining Act (1971).*

- In the matter of Borthwick & Ors v. Australian Graphite P/L'[*2-15] SAWC 1) 8 Sept 2015):*

  *Where it is not possible [*for miners and farmers to reconcile their difference*] the Court will impose conditions and where appropriate, compensation.*

  *T*his seems to preclude the possibility of the court ruling against the mining company.

- In arguing for this amendment during the Legislative Council debate on 22 July 2010, the Hon Mark Parnell raised the same concerns

  Ïn my experience with these waiver cases over the years – …. I have read most of the Mining Warden's judgements - I think the mining wardens have locked themselves into a bit of a precedent situation….. At present the presumption is in favour of allowing the mining companies to have their way". The situation, he argued, "*could benefit from a fresh set of eyes in the ERD Court."*

- However, he also cited other advantages in shifting such matters to the ERD Court including:
  - The ERD Court has more environmental background and is therefore more qualified to hear issues relating to the potential impact of exploration/mining on the environment
  - As a first-stage option, it has the authority to refer such matters to a round-table conference rather than proceeding straight into an adversarial situation.

- The suggested option of allowing such matters to be referred to the Warden's Court is flawed for other reasons: for example,
  - The Discussion Paper ignores the possibility of a potential conflict arising where, in any given case, a mining company could opt for the Warden's Court, while a farmer would select the ERD Court. Based on our experience, it is likely the company's preference would trump that of the farmers.

  - It fails to consider other methods of reducing the cost for farmers of an ERD Court hearing. This could be easily resolved if the legislation was changed to require the company to pay full court costs. This seems only fair, given they are the ones who, by initiating the proceedings, are forcing farmers to defend their rights under S9 of the Act.

  - The Discussion Paper's argument that the ERD Court is "out of step with other jurisdictions" is irrelevant. This state is out of step on many issues – eg phasing out of plastic bags – but there is no suggestion we should change this simply to fit in with other states. The key consideration is what offers the most equitable and just solution for its own population.

  - The argument posited by the Government in 2010 in support of the Wardens Court - that it allows landowners to represent themselves and receive guidance from the Court – is also questionable. It is our understanding that the same applies in the ERD Court – that legal representation is not a requirement even in a trial situation and that the rules of evidence are more relaxed than in a normal District Court. Irrespective of this, it would be unwise for a landowner to appear before either court without legal representation and the suggestion

by DSD that farmers could represent themselves before the Warden's Court is fraught with danger for the landowner.

Changes required

YPLOG totally rejects this Discussion Paper proposition.

- *Cases involving waiver challenges MUST remain in the ERD Court.*
- *While the Wardens Court may be cheaper and quicker, there is no indication it would deliver equitable, fair or balanced justice for farmers. Instead, the real beneficiaries of a reversion to the pre-July 2011 situation would be the mining companies.*

3 Suggestion farmers should have the right to initiate court proceedings under S9AA

This is one of the more bizarre sections of the Discussion Paper.

- It poses the question: *Should landowners have the right to commence negotiation with an operator in relation to exempt land' by issuing a notice under s 9AA of the Mining Act*?

- S9AA is all about giving miners a mechanism to overturn a farmer's refusal to waive the exempt status of his agricultural land. It is not there to give farmers the right to "*formally object to entry*" (as claimed on p.33). They already have the right to do so, simply by invoking S 9 of the Act.

- It is almost impossible to imagine the circumstances in which a farmer who has the right to deny entry under S 9 would want the right to initiate court proceedings under S9AA simply to reiterate his/her objections, especially knowing that by so doing, (s)he would run the risk of having those objections overruled by the court.

- The other suggestion - that farmers would use this right to commence negotiations with a mining company in relation to exempt land - is equally bizarre. In all our dealings with farmers, this has never been raised, nor would we expect it to be. It is the miners who need to initiate negotiations once they decide to go down the path of an exploration program or mining proposal. Until that point, farmers are required, and overwhelmingly prefer, to do nothing.

- Once negotiations commence, if a farmer is not happy with what is being offered, (s)he can simply refuse to sign the waiver. The company can then either meet the conditions or take the matter to court. And if our earlier recommendation is accepted - that if a court rules in favour of the company, court-ordered negotiations must then occur re conditions/compensation - the farmer still has the opportunity to engage in a court-sanctioned negotiation process.

- One if left with the impression that this is a "throw-away" suggestion designed to give the impression the Government is serious about improving farmers' rights, when in fact this will achieve nothing of the kind. It is nothing more than window dressing.

Changes required

- *YPLOG strongly rejects this suggestion. Farmers would gain nothing from having the right to take a company to court.*

PART 3 REDRESSING THE IMBALANCE – A COMMUNITY PERSPECTIVE

The preceding sections of this submission focused mainly on issues and concerns from an agricultural/farmer perspective particularly during the exploration stage. However, many aspects of the Mining Act and its Regulations impact on both farmers, their neighbours and local residents living within close proximity to mining operations.

In the case of the proposed Hillside mine, the boundaries of the mining tenement abut or are within 2- 5 kms of four seaside communities – Black Point, Pine Point, Rogues Point and James Well. All residents in these communities will be significantly impacted by the Hillside operations.

Part 3 of this submission considers some (not all) of those elements of the legislative/regulatory regime which fail to address the needs of this broader group. It also focuses mainly on issues that arise after exploration in relation to a Mining Lease proposal and beyond.

SECTION 3.1 LEGISLATIVE PRINCIPLES/OBJECTIVES AND EXTERNAL ACCOUNTABILITY

- As noted in our introduction, the current Mining Act and Regulations reflects a massive power imbalance between the mining industry and the community. Until recently, this imbalance has largely gone unchallenged because the majority of exploration/mining has taken place in remote areas of the state.

- However, in recent years mining has sought to move into more densely populated, agricultural and tourist areas, bringing with it greater risks of harm to the environment, agriculture and local community residents.

- With the end of the mining boom and the resultant Australia-wide transitioning towards agriculture and other industries, the Government's continued focus on mining is not a useful blueprint for the future economic well-being of this state. The Western Australian situation makes this clear. Since the end of the mining boom, it has experienced negative growth, falling house prices, increasing deficits, increased rental vacancy rates and record levels of debt.

- This review should therefore be focused on how to achieve a fairer and more equitable system that protects **ALL** that is valuable in a diversified economy, not just the mining industry.

1. Separation of departmental responsibilities

- A key contributor to the current preferential treatment of mining to the exclusion or marginalisation of all other sectors is the fact that the same department is responsible for promoting and facilitating mining in South Australia as well as approving and regulating all mining-related activities.

Changes required

- *To ensure a balanced approach to the approval and regulatory practices in SA, these tasks should be completely separated from the task of promoting mining.*

- *While DSD could retain responsibility for promotional aspects, a separate entity is required for approval and regulatory components.*

2. Independent appeal and complaint mechanisms

- The Discussion Paper, page 50 states: *"All South Australians want a strong legislative framework around…..[the] prevention of any maladministration by either government or industry".* YPLOG strongly agrees.

- At present, there is no mechanism by which the community can challenge any administrative decision made by a Minister or department. Nor is there any independent arbiter to assess and rule on complaints against mining companies or against DSD.

Merit reviews

- The only means currently available to challenge an administrative decision – including the Minister's decision to grant a mining lease - is via a judicial review, which is very limited in scope.

- It focuses only on whether the decision-maker has followed the correct legal process. Factors to be considered by a judicial review include whether the decision maker has;
  - Wrongly applied or misunderstood the law
  - Wrongly taken into account irrelevant considerations, or failed to take account of relevant issues
  - Acted improperly, in bad faith or with bias.

- A judicial review does not allow for a fresh examination of the "merits" of the proposal itself and, because the review is heard by the Supreme Court, it is a very lengthy and expensive exercise.

Changes required

- *A Merit Review similar to that which has operated in the NT and NSW should be introduced. In NSW a third party merit appeal provision is contained in the EPA Act. This process allows the community to make application to a judicial officer or tribunal. This agent has the power to undertake a full reassessment of a particular proposal, and reach an independent determination as to "merits" of a project from the perspective of all affected parties. If deemed appropriate, it may hand down a decision contrary to that of the Minister.*

- *Although strongly opposed by the mining industry, this review process ensures broader community and environmental considerations are given appropriate weighting and has the capacity to redress at least some of the preferential focus on mining.*

Appointment of a Mining Ombudsman

At present there is no way for the community to hold mining companies or DSD to account.

- As noted, all complaints about mining company breaches are dealt with internally by DSD. In a number of situations these complaints have either been dismissed or have resulted in a mere 'slap over the wrist' for the company.

- If complainants are dis-satisfied with any DSD decision, action, or lack of action, there is no independent agent to whom he/she can appeal.

Changes required

As per the Resource Operations Ombudsman Bill 2015 *tabled by the Hon Robert Brokenshire:*

- *A Mining Ombudsman appointed by the Governor, with the powers of a Royal Commission and who reports directly to Parliament must be established in SA.*

- *This person must be free from any control or direction by the Minister (Clause 10).*

- *Access to the Ombudsman must be available to any person affected by the conduct of resource operations (Clause 17.*

- *The Ombudsman must have the power to consider such issues as:*
    - *Entry to land in connection with resource operations*
    - *Compliance with the requirements of any lease, licence or authority under which resource operations are conducted*
    - *The degradation of, and other impacts on, land or waterways arising out of resource operations and*
    - *Operations for the rehabilitation of land or waterways [see clause 3(2)]*

- *His/her functions must include (see Clause 8):*
    - *(a) To assist owners and occupiers of land in negotiating with persons involved in the conduct of resource operations on the land in relation to those operations including in relation to access to land (whether under a lease, licence or some other authority or arrangement)*
    - *(b) To provide an independent complaint handling process to investigate and resolve complaints relating to the conduct of resource operations*
    - *(c) To identify and review issues arising out of complaints and to make recommendations for improving compliance with legislative, regulatory and other requirements relating to the conduct of resource operations and preserving and increasing the rights of persons affected by the conduct of resource operations.*
    - *(d) To monitor compliance with orders made by the Ombudsman associated with the provision of an independent complaint handling process*
    - *(e) To provide information, education and advice in relation to*
        - *i. The rights and responsibility of those conducting resource operations and persons affected by the conduct of resource operations; and*
        - *ii. Procedures for resolving complaints and*
        - *iii. Other matters (if any) determined to be appropriate by the Ombudsman*
    - *(f) To prepare and publish standards relating to the conduct of resource operations and to promote the adoption of such standards*
    - *(g) To perform other functions conferred on the Ombudsman by or under this or any other Act.*

3. Legislation to include Statement of Principles and Objectives

- The Act itself does not contain an overarching statement of Principles or Objectives. Thus, it is up to the Department and the Minister to impose their own interpretation.

- According to a DSD publication (*Mining Act Compliance and Enforcement in South Australia, back cover)*

  > *The primary objectives of the Mining Act are to ensure the efficient and effective recovery of the state's mineral resources without undue harm to the environment, providing the appropriate royalty return to the state and ensuring appropriate rehabilitation when recovery operations cease"*

- This reflects a strong bias in favour of mining. The needs and well-being of local communities do not rate a mention, nor does the continued viability of pre-existing industries. Use of the terms "*undue harm***"** to the environment and "*appropriate"* rehabilitation are so broad as to leave DSD with considerable "wriggle room" in how they administer the Act.

Changes required

- *The Mining Act must be amended to include a clear Statement of Principles and Objectives, to guide decision-makers when exercising powers under this Act*

- *These must reflect commitment to achieving a just and equitable balance between the needs of the mining industry and those of the local community, pre-existing industries and the environment.*

- *The Statement should include a commitment to:*

  - *absolute protection for South Australia's agricultural land from mining and exploration*
  - *the prevention of harm to:*
    - *the environment, especially ground, surface and sea-waters such as St Vincent's Gulf; air quality; soils and vegetation etc.*
    - *community health and well-being*
    - *no negative impact on the economic prosperity of other industries*
  - *full cost-benefit analysis for each mining proposal*
  - *fully costed and funded leading practice rehabilitation*
  - *inclusive decision-making at each stage of the process, including*
    - *full community consultation*
    - *full disclosure of information*
  - *transparent and accountable decision-making*
  - *a strong and independently evaluated environmental regulation and compliance regime.*
  - *Demonstrable proof that the company has obtained a social licence*

SECTION 3.2: COMMUNITY INVOLVEMENT AND CONSULTATION

1. Clarification of term "community" - need for clear definitions

- The only term used in the Mining Act to identify a specific category of person is "the owner of exempt land" (s9(3b).

- The Discussion Paper (and other DSD publications) converts this to "landowner" which it defines (somewhat ambiguously) as:
  - *A person who holds a registered estate or interest in the land conferring a right to immediate possession of the land or*
  - *A person who holds native title to the land*
  - *A person who has, by statute, the care, control or management of the land or*
  - *A person who is lawfully in occupation of the land*. (p. 100)

- This definition seems to limit consideration to ownership of agricultural or pastoral land. An owner of a residential dwelling is, it seems, excluded.

- The other frequently used term by Government and the general population is "community". It appears frequently in the Discussion Paper but it is never defined and generally is so broad a concept as to be almost meaningless.

- However, what is missing is the concept of what could be termed "local resident" – ie those persons living in a settlement or town in close proximity to an exploration/mining operation. As noted earlier, this proximity means
  - They are likely to be exposed to a range of potentially harmful side-effects of mining, including exposure to dust, noise, lights, blasting vibrations etc. which pose serious risks to their physical health and emotional/psychological well-being, especially if a large scale mine operates 24/7.
  - Potential financial loss arising from a decrease in property values (who wants to live near a mine?)
  - Curtailment or change of future life plans, including a decision to relocate

- In effect, these people form an important sub-set of the general "community" and need to be acknowledged as a distinct sub-set with rights and needs that are over and above those of people living at a distance from a mining operation. Their right to participate and have their voices heard must be given priority over those persons in the general community, as is the case with owners of agricultural land.

Changes required

- *A clear set of definitions for*
  - *Landowners - ie those who own agricultural or freehold pastoral properties (ie farmers)*
  - *Local residents – ie those living in close proximity (eg within 5 kms) of a mine*
  - *Broader community*

- *Recognition that local residents have a particular set of needs and rights in relation to nearby mining operations*

In the ensuring discussion, the term community refers to all three categories listed above. For consistency, the term farmer is used in place of "Landowner" and local resident is used to refer to those living in close proximity to mining.

2. Community Consultation

- The Discussion Paper talks about the need for community consultation, better flow of information and greater transparency. Once again, though, it skirts the real issues – notably the imbalance between the Government and mining companies on the one hand and community/local residents on the other hand.

- As a result, the community is always fighting a rear guard action with their concerns and issues either not heard or dismissed with trite responses.

Company strategies for "community engagement"

Community Consultative Committees

A primary vehicle for community engagement during the entire process from exploration through to operational oversight of a mine is the Government-sanctioned concept of a community consultative committee. Such committees – ostensibly comprising a broad cross section of local residents – supposedly provide a vehicle by which the company can keep the community informed about its plans, as well as receive feedback about community concerns and issues.

However, YPLOG's experience has shown these committees are flawed, mainly because local residents and mining representatives do not occupy a level playing field.

Factors contributing to community disempowerment within the committee structure include:

- Setting up the committee: because the company is required to establish a CCG, they usually control the timing, the selection of community representatives and the terms of reference.

- Lack of experience: on one side of the table sit local residents who often know nothing about exploration/mining and who may never have participated on a committee before. On the other side sit the mining company representatives who, in the main, have had many years' experience in the industry and control
    - the flow of information provided to the committee
    - the consultants who provide the technical information/briefings
    - the agenda and time frames.

  As a result, committees often find themselves on the back-foot in discussions.

- Lack of access to independent technical knowledge to independently assess the considerable amount of technical material contained in mining proposals. They are therefore not in a position to understand and question the information provided to them by the company.
- No access to independent funding to employ or engage
    - a completely independent facilitator or chair

    - admin. support – so the company often steps in to take minutes, distribute information on behalf of the committee (sometimes under the company's logo) , maintain a webpage (often embedded within the company's website)
    - independent technical consultants
- The result: a community perception that the committee is not independent of the company and that its role is not to hold the company accountable but to help the mine proceed. Community disengagement from the process and mounting distrust of the company often follows.

Other problems:

- Representatives are not reimbursed for the time and money spent in fulfilling their role, creating the impression that their input is not valued by either the company or the Government
- Insufficient time for representatives to read the detailed reports provided to them, attend regular meetings, keep their own constituents informed etc. This again puts them on the back foot in any debate with the company.
- difficulty in retaining and recruiting new members because of the time involved

The end result is that the CCG structure allows the company to tick the "community consultation" without engaging in real discussion with local residents on an equal footing.

Changes required

The following is required to ensure these consultative committees are truly independent of the company and represent a valid method for community consultation and engagement:

- *Independent funding for*
    - *facilitator/chair*
    - *administrative support,*
    - *establishment/maintenance of independent website*
- *Access to independent technical consultants external of the company or Government*
- *Compensation for time/expenses incurred by representatives*
- *Adequate time for document reading*
- *and for seeking broader community feedback*
- *DSD support person to respond to any committee concerns re the company's participation*

One-on-one meetings with local "stakeholders"

- While this strategy allows companies to again "tick" the community consultation box, these meetings are often not designed to listen to local concerns but to push the company message re the benefits of the mine and the lack of any potential environmental or health threats.

- In our experience, the company rarely provides minutes or records of these meetings to those involved. So any negative comments expressing total opposition to the operation or major concerns re pollution etc are never acknowledged. Instead, the only information generally published by the company is a list of how many farmers, local residents, associations etc. it has met with over a specified time period. This list is often impressive. But what it fails to mention – and what DSD seem to be totally unaware of – is the actual content of those meetings and the extent of negative feedback or outright rejection was received.

The company is therefore able to claim it has a social licence based on its level of "community consultation" without revealing anything about the nature of the feedback it has received.

Changes required

- *A company must provide a record of the meeting to those involved*
- *In any reporting to DSD, include a verifiable summary of the content of each discussion, including negative feedback.*

3 Statutory public consultation

Mining Lease Proposals

- The only point in the process with a statutorily mandated public consultation period occurs when a Mining Lease Proposal is submitted to Government.

- Even this, however, is totally inadequate.

- Mining Lease Proposals often run into thousands of pages of highly technical material and are the end product of years of work by the company. However, the public consultation period is generally restricted to 6 to 8 weeks in duration. This is clearly far too short a period for the community to read the document, seek advice from technical experts to assist them to understand the highly complex technical material and then to write a comprehensive submission.

- Requests for extensions, if granted, are usually for a few weeks at most. In the case of the Hillside Mining Lease Proposal, YPLOG, the YP Council and Rex Mineral's own CCG all put in for an extension and were given one week only, which was, at best, a token gesture.

- The problem re the Hillside MLP was exacerbated by the fact that it was released for public comment in September and submissions closed on 8 November. This period coincided with the harvest season – the busiest time of the year for farmers. This seems to be a frequently used strategy used by this Government. For example:
    - The Copper Strategy – 6 weeks consultation ending 23 October 2015
    - The Multiple Land Use Framework – 5 Weeks. 12 Nov - 18 Dec 2015
    - The Mining Legislation Review - originally one month - December 2016 (harvest time) – then extended to end of Feb 2017 (harvest, school holidays) in response to considerable industry and community pressure, but still totally inadequate.'''
- The duration and timing of these public consultations effectively undermines the ability of the farming community to participate fully in the consultation.

Changes required

- *The time allowed for public consultation for MLPs must be sufficiently long to allow meaningful community input – ie at least three months with the option of a similar extension in appropriate circumstances.*

- *The timing of MLP and other relevant policy related public consultation periods must not coincide with harvest or the busy Christmas period. Again, this is a matter of balancing the needs of the mining industry with those of the community.*

4 Other points where mandated community consultation must occur

Once the MLP consultation period has closed, no formal public consultation period of required by Government.

In terms of the process applied to the Hillside MLP the community has not had formally mandated input into:

- Rex's Response Document which was supposed to address all DSD issues and community concerns re the Proposal
- the conditions imposed as part of the mining tenement, even though the company clearly held lengthy negotiations with DSD which resulted in some of the more stringent conditions being dropped, and others amended in favour of the company. Once these conditions were made public, a number of concerns were raised by local residents and farmers, but there was no vehicle for expressing those concerns or requesting changes to strengthen community and environmental protections.
- Any changes to those conditions during the life of the mine (see later discussion)
- In the specific case of Hillside, when the company changed its plans after the mining tenement had been approved, the community was not consulted about those plans and had no input whatsoever into their assessment. Yet the impact on the community from the new mine plan raises new concerns and issues which should have been identified. (See later discussion)

Changes required

- *At every point in the system where decisions are being made that directly impact on the local community, environment and pre-existing industries, full community consultation should be mandatory.*
- *This includes every point identified above.*

5. Inappropriately flexible time limits for companies.

As noted above, the public consultation phase for the MLP is generally limited to 6 – 8 weeks with very short (one or two week) extensions granted. In contrast, it is common place for a company to be given extension after extension – often for 12 months – if they fail to meet any deadlines.

For example, extensions granted to Rex Minerals' following approval of the Hillside MLP include:

- *DAC Applications*
  - Roads – 1 year extension to complete works
  - Port – 2 year extension to start works, 1 year extension to complete works
- *Acceptance of Mining Tenement offer:* 4 week extension for Rex to decide
- *PEPR:* Two 12 months extensions granted for submission of PEPR, with another extension request likely

- *Time to undertake alternative Feasibility Study (post-MLP approval) and to submit all required details to DSD*: Approx. 22 months

Clearly, companies are not required to meet deadlines and the process is allowed to drag on for years. No consideration is given to the impact this has on local residents and farmers whose lives in many cases are on hold while the company struggles to ""get its act together".

Changes required

- *A limit must be placed on the number of extensions granted to mining companies.*
- *Each extension must be rigorously assessed to determine whether there are compelling grounds for granting an extension.*
- *That assessment must include considerations of the impact such delays are having on farmers and local residents.*
- *An inability to commence production within a clearly specified time limit must constitute grounds for rescinding ML approval.*

6. Access to information

- YPLOG supports the publication of a greater range of Government and operator documents as listed on page 50.
- However, the proposal, by adding qualifiers such as "publication of relevant documents" "where appropriate", gives DSD considerable discretion to determine what is relevant and appropriate.
- There will also be reports/documents other than those identified in a specific list (as per page 50) that are not part of the 'normal process – such as the considerable array of documentation provided by Rex Minerals to DSD as part of the assessment process for its small scale start up at Hillside. This situation was not anticipated, but the reports were of vital concern to the community.
- Other issues;
    - Accessibility of information: an increasing amount of material is now only available on-line, eg on DSD or SARIG websites. This presumes individuals know about these websites, have the skills to access them and have the time to keep a constant watch for new information. It is, in many ways, a good way for Government to "bury" important documents. For this reason, increasing reliance on E-Commerce is not the answer.
    - Given the extent of negotiations and correspondence that occurs between Government prior to, during and after mining lease approval, Government and operator reports are only the tip of iceberg. It is during these behind-the-scenes interaction where most of the decisions and agreements are reached. Yet all of this is hidden from the community. We know, for example, that there has been considerable interaction between DSD and Rex regarding the tenement conditions for Hillside and more recently, during DSD's assessment of its new mine plans. But the community had no knowledge of, and therefore was unable to have a say in any of this.
    - DSD's ability to release documents prepared by the company also seems to be limited, as acknowledged on page 72 of the Discussion Paper. DSD have, on several occasions, indicated they were unable to release reports provided to them by Rex Minerals because

these were, in effect, owned by the company. All DSD could do was encourage the company to release them. This proved unsatisfactory.

Example:

- to allow DSD to assess Rex Minerals' new plans for Hillside, the company prepared a number of crucial documents including Description of Mining Operations (and appendices); Updated Mining Proposal Section 8; Impact Assessment tables.

- Once DSD had determined it had all the information required to make its decision, it told Rex it could release all reports. However, in the ensuring months, the company only released the Description of the Mining Operations + appendices. It did not release the other reports, despite several requests to do so. The documents were finally uploaded onto the DSD's website on 28th Feb 2017, when the Department announced the outcome of its assessment.

- At times, companies use the "commercial in confidence" excuse not to release sensitive reports. For example, as part of its Response Document to the Outcomes of Statutory Consultation issues raised by DSD, Rex refused to release several uranium reports for this reason. One report described the distribution of uranium at the mine site – an issue of vital concern to local residents. Some two years later, Rex provided an overview of the relevant information omitting any commercial in confident details. This 'de-confidentialised'' report should have been released as an appendage to the Response documentation.

- Finally, while access to more information is important, without greater opportunities for community consultation and involvement in decision-making, it doesn't achieve the full purpose of "achieving Government accountability".

Changes required

- *DSD and the Minister must have authority to release all documents submitted to by the company. These should be released as early as possible in the process.*

- *The list specified on page 50 should include:*
  - *a company's Response Document and any subsequent change-of-plan documentation,*
  - *outcomes of each Government investigation including penalties imposed*

- *In addition to this specific list DSD and the Minister should have discretionary powers to release any other documents identified by local residents as crucial to their understanding of the project and its potential impacts (eg Rex's small scale start up documents)*

- *Information on the frequency, nature and content of "behind the scenes discussions/negotiations with companies must be released. This would avoid the need for lengthy and costly Freedom of Information applications.*

- *In matters of particular community concern, Commercial in Confidence reports must be accompanied by a de-confidentialised summary document, which meets the community's information needs.*

- *Alternative ways of distributing information must be identified. For example,*

- *Developing a comprehensive email list of community stakeholders (ie local residents impacted by a particular operation) for the distribution of information pertinent to their situation*
- *Providing specific information (eg issuance of an exploration licence) to the farmer directly impacted*
- *An email list of key individuals impacted by a particular operation, and in relation to Rex Minerals Hillside mine, DSD seem to have developed an email list of key local residents and recently used this Information*

SECTION 3.3 PROCESS ISSUES

1. Mining Lease Assessment

- YPLOG disputes the statement (Discussion Paper page 44) that the Government follows a Triple Bottom Line Assessment (ie a combined social, environmental and economic assessment). While it may take some account of social and environmental issues, the fundamental driver is the supposed economic benefits of a project.
- With current high unemployment levels in SA, a company simply has to mention jobs to get approval. It doesn't even have to substantiate its claimed job numbers nor provide a full cost-benefit analysis including potential environmental costs, and impacts on pre-existing industries.
- The underpinning assumption driving the assessment process is that the application will be approved and any community or environmental issues can be managed" – an assumption contradicted by growing evidence from across Australia of environmental and human harms caused by mine accidents, inappropriately regulated mining operations and failed rehabilitation.
    - YPLOG understands that in recent decades, only one proposal has been rejected by DSD – and this was a relatively small sand-mine. Instead, DSD's preferred approach is to work with a company to change/modify a proposal to render it acceptable.

Changes required

- *There needs to be a complete rethink of the Government's approach to the approval decision, which does not prioritise mining over all other considerations, as is currently the case.*
- In addition, a *full cost benefit analysis should be mandatory before any approval is given*

2. Mining tenement conditions

Factors to consider

- The following list of factors (page 50) MUST be considered during assessment and MUST be included as mining tenement conditions.

    - no public health and/or public nuisance impacts from any mining source
    - no contamination of soils, crops, livestock or any other aspect that could harm agricultural productivity
    - no contamination of ground and surface water, or other water bodies such as St Vincent's Gulf
    - no reduction in native species or contamination of native vegetation
    - no environmental impacts
    - Adherence to leading practice rehabilitation, including backfilling of pit void and returning the land to as closely as possible to that which existed prior to mining.

Ways in which conditions can be subverted

Many of the above were included in Rex Minerals' Hillside Mining Tenement. However, the reality does not match the rhetoric.

- ***Negotiated 'watering down' of conditions prior to acceptance of the mining tenement.*** In the six to eight weeks Rex took to decide whether to accept the Mining Tenement offer, negotiations between the company and DSD resulted in some of the originally proposed conditions either being deleted or 'watered down' in favour of the company. For example, limits on noise levels were raised; In contrast, the community had no say in the process and in fact were not privy to those conditions until after the tenement was accepted by the company.

- ***Contradictory conditions with negative community consequences***
  What appeared to be water-tight conditions proved to be more "rubbery". For example:
  - Schedule 6 condition 1 of the Hillside Mining Lease Tenement document states: *The tenement holder must ensure there are no public health and/or public nuisance impacts from air emissions and dust….*
  - But Schedule 2 condition 2 – 5 sets specific statutory limits for dust concentrations and dust deposition rates.

  When asked which condition took precedence - ie what action would DSD take if air emissions were causing public nuisance impacts even if the dust limits stipulated in Schedule 2 were being met - DSD responded:

  > *"the Statutory limits for dust concentrations stated in 2nd Schedule of the Hillside Minerals Lease are what constitute the achievement of the public health and public nuisance air quality outcomes listed in 6yth Schedule Clause 1.* ***What this means is that compliance with the 2nd Schedule limits …will mean compliance with the [public nuisance/health] impacts.*** *(DSD Response to questions raised by YPLOG)*

  As a result, Rex are not required to directly measure public health/nuisance impacts as part of their compliance regime. Instead, if they meet their regulatory dust limits, DSD will assume there are no public health consequences.

- ***Condition limits do not take account of local conditions***
  For example, the limits set for TSP concentrations for Hillside are based on NSW and New Zealand standards which are unlikely to be applicable to Hillside.

- ***Discretionary powers of Director of Mines to vary conditions***
  Under the current system, the company may apply to the Inspector of Mines to vary mining lease conditions. By implication, "vary" equates to "lessen" or "weaken" the limits set. In contrast, the community has no commensurate right to apply to the Inspector to have those condition limits revised downwards under circumstances to redress undue nuisance and health impacts.

  For example, according to Rex Minerals' Hillside Tenement Documents,
  - Air quality: Condition 5.1 allows TSP dust emission limits to be exceeded as long as the company proves there will be no increase in public nuisance.
  - Noise: Condition 11.1 allows the specified noise limits to be exceeded if the Director of Mines is satisfied that it will not cause an adverse impact on nearby receptors.
  - Adjacent land use: Condition 30 specifies the spatial limits of the open pit mining, but the Director of Mines can approve an extension if it would not impact on third party property.

  Dust and noise are the two greatest concerns to local residents who fear that the limits set by DSD are already inadequate. To find that these can be further relaxed at the request of the company is considered grossly unfair.

Changes required

- *Local residents must have a say in the mining conditions imposed*
- *All conditions, especially their statutory limits, must take account of and be relevant to local conditions, not based on generic, interstate or overseas standards.*
- *Statutory limits attached to conditions such as noise and dust emissions/deposition must be specific to each region, not generic.*
- *The right of companies to apply to the Director of Mines to seek an exceedance of condition limits should either be deleted OR local residents should be accorded the same right as the mining company to apply for a downgrade of those limits in the interests of community well-being and safety.*

3. Discussion Paper suggestions totally rejected by YPLOG

Decreasing tenement assessment times

- Page 88 seeks input into how assessment times could be reduced.

- *YPLOG strongly rejects this proposal*. The community is already disadvantaged by the extremely short public consultation time. It is only the mining industry who would benefit from this suggestion.

Allow for grant of mining lease up to a maximum of 99 years (page 90).

- The discussion paper (Page 90) suggests that the term of the mining lease should reflect the predicted mine life (0 up to max of 99 years).
- YPLOG strongly rejects any suggestion of a licence greater than the current 21 years. Under the current system, there is ample opportunity for a company to apply for an extension of its lease if operations are to continue beyond that 21 years. To grant a company an initial licence of 99 years ignores the huge changes likely to occur in that time.
- It would likely lead to an increase of care and maintenance situations, with mining operations mothballed (without appropriate rehabilitation) for potentially decades at the whim of the company.
- It also shows a complete lack of understanding or concern for the economic and emotional well being of farmers whose land sits within a mining tenement or of the well-being and financial security of nearby residents.
- Even with a 21 year lease (as per Hillside) if the company holds a waiver over a farmer's property, his/her ability to maintain his agricultural business, invest in business improvements and even something as simple as undertaking succession planning is significantly harmed. The chances of selling the property other than to the company would be virtually non-existent, and the long-term impacts of living near a massive, open cut mine, with all the noise, dust, light pollution, blasting etc. makes life virtually untenable.

YPLOG totally rejects extending mining licences beyond the current 21 years.

Simplified grant process for leases where the environmental assessment of an operation is left to the PEPR stage

- YPLOG strongly rejects this suggestion on the grounds that, as far as we understand, once a mining lease is granted it cannot be rescinded by the Minister unless the operator breaches the conditions.
- This suggestion is therefore dangerous, because it grants a mining lease without evidence that the company has the technical and financial capacity to prevent all the potential environmental consequences of the mine. The suggestion relegates environmental issues to an almost irrelevant position in the process - something that is tacked on after the event.
- Again, the only beneficiaries of such an approach will be the mining industry.

YPLOG totally rejects this suggestion.

More flexible "generic mineral leases" (page 83)

- *Suggestion 1: Combining both mineral and extractive lease types so that all minerals could be sought provided there were still stringent protections of the landowner right to use extractive materials for "'personal use"'.*
  Based on our experiences with mining companies on YP, there will be no protection for landowners.

- *Suggestion 2: allowing a company to search for and extract what they want while freeing up rights for other operators to search and recover different minerals in same area*
  Having to deal with just one company and one potential mine has made life untenable for many farmers. To expose an individual farmer to multiple exploration companies seeking access to his land would be untenable. This suggestion completely ignores the impact on the farmers involved whose financial and emotional well-being are seriously undermined when they have to deal with just one, let alone multiple, companies.
  Only the companies would benefit.

  B*oth suggestions are completely rejected by YPLOG.*

4 Power to Rescind Mining Tenement Approval

- At present, as noted above, once a mining tenement is granted, the Government apparently lacks the power to rescind that approval unless and until the company significantly breaches its conditions during operations.

- In the case of Rex Minerals, the Mining Tenement granted in August 2014 remains in place, even though just two weeks after approval, Rex announced that, because of its inability to raise the necessary finances, it would not pursue the full scale proposal but would explore

- Smaller start up options. In the almost three years since then, the company has failed to meet a number of deadlines and has still not secured the necessary finances, even for this smaller project. The future of Hillside therefore remains in doubt.

- At no point has the company been held accountable or been subjected to any sanctions or penalties for its inability to proceed with its original proposal. Nor has there been any

Government reassessment of the company's long term capacity to take this project forward. The negative impact of repeated delays and uncertainties for local residents and farmers sitting within the original mining tenement have been totally ignored.

- To allow this situation to drag on for almost three years without any measurable progress is untenable.

Changes required

- *The Mining Act must be amended to allow the Minister to rescind approval of a mining tenement if the company is unable to proceed with the mining operation as outlined in its MLP and/or is unable to raise the necessary finances within a stipulated period.*
- *In such situations, the company must either submit an entirely new MLP or withdraw completely.*

5. Providing clear pathways for pre-project changes in operations

- Page 89 of the Discussion Paper argues that "Operators often need flexibility to make changes to their mining operations during mine life to adapt operations to certain changes"

- It does not, however, consider the process that should be followed if changes occur prior to the commencement of operations. Yet it is this exactly this situation which has exercised DSD over the past 2.5+ years in relation to Rex Minerals' Hillside project.

The Rex Minerals example:

- As noted above, in August 2014 - just 2 weeks after their Hillside mining lease proposal was approved by the Minister - Rex Minerals announced it would not proceed with the full scale operation, but would investigate options for a smaller start up.

- DSD's strategy for responding to this process has been less than adequate.

- At the time of the announcement, the community called on the government to require Rex to go back to the beginning and submit an entirely new Mining Lease Proposal.

- DSD chose not to do so. Instead, it opted to undertake an assessment of the exteent to which the revised project was "consistent" with the original plans and its likely compliance with the mining lease conditions.

    - If judged consistent, Rex could then proceed to the next stage – ie "*prepare a Program for Environmental Protection and Rehabilitation (PEPR).*
    - If inconsistent, Rex could either "*.. further revise the project and resubmit or apply for new or additional tenements,* requiring the lodgement of an entirely new MLP application process with full public consultation. *(DSD Frequently Asked Questions)*

- The process proved to be completely unsatisfactory.

- The term "consistency" was never defined and no criteria for assessing it was released.

    - It completely excluded any community involvement. Very little detailed information about the new plans was released to the community until March of this year. More significantly,

no community input into the decision-making process was permitted. Instead, DSD announced it would make its decision once their assessment was completed.

Given the level of community concern about what it perceived as major changes to the project and the potential for new risks to the environment, local residents and agriculture, the Government's failure to allow public comment was completely contrary to the notions of transparency and community involvement

- The process itself appeared to change over time, without the community being told. For example, it was originally stated that, if judged inconsistent, the company could revise the project and resubmit. The community, logically, interpreted this to mean the company would need to revise its plans for the smaller start up.

  However, over 2 years later - just weeks before DSD's decision was announced - YPLOG learned the company had been given another option – namely, to submit a PEPR that was consistent with the original plan and conditions. This was the first time the option to proceed to a PEPR was mentioned in the context of a non-compliant assessment.

- The entire process was extremely lengthy, taking almost three years (although most of this delay was due to the company, not DSD). Delays included:

  - 9 months for Rex to complete its Extended Feasibility Study (Sept 2014 – May 2015)
  - Another 12 months for Rex to provide sufficiently detailed information to DSDE to enable them to commence their assessment (June 2015 – May 2016)
  - 10 months for DSD to assess the material and announce its decision: (June 2016 to March 2017)
  - And at the end of this period, DSD determined that the small scale start-up was not consistent with the original proposal. However, rather than rejecting the project out of hand, Rex now have the option of submitting a PEPR that would demonstrate consistency. Hence, DSD will not make a final decision until Rex has submitted their PEPR.

    When a final decision will be made is not known.

- Delayed release of documentation provided by Rex to DSD:
  - Rex provided most of the detailed documentation re the revised plans to DSD in May 2016. At that stage, DSD indicated the reports could be released once they had determined they had sufficient information to start their assessment process. This occurred in about Sept 2016, at which stage, DSD informed Rex it could release the material.
  - Apart from one report (+ appendices) released by Rex in ……, it was n ot until March 2017 that all documentation was uploaded onto the DSD website.
  - In part, this delay stemmed from DSD's decision that, because these documents had been prepared by Rex, it was the company's responsibility to release them.

- Not once during this entire debacle has the government paid any attention to the attendant community and personal harms. Its priorities remain with the company while many local residents have been left feeling angry, powerless, alienated and marginalised by Government.

- The Discussion Paper's statement that *Operators often need appropriate flexibility to make changes to their mining operations during the mine life….(page 41)* is totally biased in that it

completely ignores the community's need to have a say in their future. And to say that "*proposed changes MAY be of interest to landowners and the community"* (page 89) is insulting.

Changes required

- *A process for responding to changes to a mine plan after a ML has been approved but prior to any work commencement must be clearly specified in legislation.*
- *This process must be determined in consultation with the community*
- *Preferably, this process would require the company to submit an entirely new MLP involving full public consultation and, if approved, a new set of conditions and a new PEPR.*
- *In addition, the new MLP must explain the reasons for its decision not to proceed with the original proposal and provide clear evidence that it now has full financial and operational capacity to take the new plans forward.*
- *The process and the final decision must achieve an equitable balance between the needs of the community and the needs of the company (see p89).*

SECTION 3.4 REHABILITATION AND MINE CLOSURE

1. Inadequate rehabilitation

- The statement (Discussion Paper p. 60) that "…*some mine related landforms like decommissioned tailings storage facilities, mine workings, and rock dumps cannot be removed* …" makes a mockery of the claim that the Government's aim is to "*Enforc[e] leading practice mine closure planning (p 52)".*

- Instead of considering more innovative approaches to post-mine landform designs and structures, the establishment of sustainable eco-systems and post-mining productive land uses, the paper talks only about "planning for mine closure at the earliest stages of mine planning and progressive rehabilitation throughout the life of the mine". Early planning and progressive rehabilitation is useful, but these are secondary issues and are easily achieved by the company if the rehabilitation plan itself is minimal.

- DSD's 2011 Minerals Regulatory Guidelines for a mining and rehabilitation program (V4.11) (p 36) described *General environmental and rehabilitation standards* as

  The return of disturbed land to a stable, productive and self-sustaining condition, after taking into account the beneficial uses of the site and the surrounding land. This includes:
  - *physical, geochemical and ecological stability*
  - *the protection of the quality of the surrounding water resources*
  - *a condition where the risk of adverse effects to people, livestock, other fauna and the environment in general has been reduced as far as practicable to a level acceptable to all stakeholders*.

  It also included

  The establishment to the satisfaction of the community and government of:
  - *clearly defined realistic beneficial and sustainable post-mining land use (taking account of both the capability of the land and practicalities)*

- Redrafted 2012 guidelines (*see The Guidelines w Minerals Regulatory Guidelines | MG6 Guidelines for miners: preparation of a program for environment protection and rehabilitation (PEPR) for extractive mineral operations in South Australia. Version 2.0 April 2012),* shifted focus to a risk-performance-based process which aimed to:

  "*ultimately return the land, after mining has been completed, to a state in which no third-party **impacts** are likely to occur indefinitely into the future. This means that the site must be left in a safe and physically, geochemically and ecologically stable condition and that external visual amenity is acceptable.*

  Significantly, all reference to returning the land to stable, productive and self-sustaining conditions has been omitted.

  This 2012 guideline would certainly satisfy industry requirements to do less rather than more (thereby saving money) but does little to ensure that the local community will be left with anything but a waste land with no productive post-mine uses whatsoever.

- The claim that the risk-based approach also *aims to develop community acceptable outcomes* also has little credibility based on YPLOGs experience with Rex Minerals' rehabilitation plan (see below).

2. A case study of inadequate rehabilitation - Rex Minerals Hillside mine

The discussion paper states: *"Appropriate rehabilitation of all mining operations should be non-negotiable".* YPLOG's experience has demonstrated that

- What the government considers "appropriate" falls far short of leading practice rehabilitation standards and
- Any attempts by the community to negotiate different rehabilitation outcomes are ignored in favour of what the mining company has proposed.

Rehabilitation experts, such as Dr Anthony Milnes, have repeatedly labelled Rex's rehabilitation plans for its proposed Hillside mine as unacceptable. He states:

> *Rex's proposed rehabilitation strategy is minimal, inadequate in terms of the long-term stability of the post-mining landscape (*A Milnes 2013; Rex Minerals' Hillside Mine – a critique of the proposal*) ….By implementing a minimal (and least costly) rehabilitation strategy, the environmental legacy will be passed on to subsequent 'owners' and eventually the community and the tax payers*". (A Milnes, presentation to Rex Minerals Community Consultative Group 4th March 2014)

At mine closure:

- The massive pit void (measuring 2.4 kms in area and 450 metres deep at mine closure) will not be backfilled. Instead, Rex is only required to ensure this huge void will be 'made safe' by constructing a fence around it to prevent public injury or death.

- Contaminated material, including tailings, radioactive waste and any remaining unprocessed oxidised ore will remain within the waste rock dumps which, as *engineered, man-made structures, are* likely to fail in the long term failure, resulting in contaminated seepage into ground surface.

- The large WRDs will be left in situ, with some rounding and covering of top and subsoil.

- Given these plans, it is highly unlikely land use practices comparable to those which existed pre-mining (especially highly productive cropping) will be reinstated.

Rex's justification for this minimalist plan?

- Backfilling the pit is: "*unachievable economically and practically (Rex Minerals MLP, 2013; 8 – 97)*
- "*The cost of … reinstatement of sufficient quantities of base rock into the pit void to achieve substantially smaller WRDs that would more closely resemble surrounding land forms is excessive and would be uneconomic thus jeopardizing the economic benefits of the project" (Rex Minerals, MLP; 8-97).*

DSD's justification (*Frequently Asked Questions p 11*) for endorsing Rex's refusal to back fill the pit?

> "..as *a result of underground mining, significant backfilling of the pit is unachievable economically and practically".*

This statement repeats almost word for word Rex's justification. Clearly, the company's ''bottom line'' has been the key driver in determining the Hillside rehabilitation plans.

As the most recent example of a large-scale open cut mining proposal in a prime agricultural and tourist area of SA, it was incumbent on the Government to demand leading practice rehabilitation standards. It has failed to do so. Instead, it has sent a clear message to all future companies wanting to move into settled rural regions that, as long as the company plays the "*it is not economic to rehabilitate*" card, they will get government endorsement.

3. Non-sterilisation of resources

- In part, Rex justified its minimalist rehabilitation plans (notably the refusal to back-fill the pit and leaving the haul roads to the pit open) on the grounds that "*The South Australian Government requires that access for any future mining or re-processing is maintained."*

- In their recent assessment of Rex's small-scale plans, DSD expressed concerns about Rex's intentions to significantly increase the size of one of its waste rock dumps on the grounds that "*the effect of this would be to increase the future costs of recovering a portion of the currently known Minerals Resource"* (*DSD Mining Assessment Report – Rex Minerals Ltd Hillside Coper Mine Change to Operations Submission, Dec 2016)*.

- The requirement that rehabilitation will not sterilize the Mineral Resource is ludicrous. It means the local community will be left with a massive open pit and a landscape that will never be returned to full productivity just in case, at some future time, another company may want to do further mining. This completely ignores the well-being of the local community and surrounding environment.

- In effect, leading practice rehabilitation is being sacrificed for some 'pie in the sky' future mining possibility.

Changes Required

- *DSD's requirement that access to the Mineral Resource for potential future extraction must be removed.*
- *Leading practice rehabilitation must be given priority, irrespective of the impact on the Mineral Resource.*

4. Consequences of failed rehabilitation

The Government's failure to enforce leading practice rehabilitation standards at Hillside ignores the mounting evidence from across Australia of the long-term costs of such an approach. For example:

- There are now an estimated 50,000 – 60,000 abandoned mines in this country.

- " ..the financial *securities for mine rehabilitation held by the various states are no-where near enough. ….Taxpayers will be left with a bill running into tens of billions of dollars unless Government and industry start taking mine rehabilitation seriously. ….A lot of the landscape has been mined but at the moment there's no real functional use for that land after the mine is*

finished. (Dr Peter Erskin, University of Queensland's Sustainable Minerals Institute, stated on ABC's Landline Program in Sept 2015)

- In Queensland, taxpayers face a $3.2 billion black hole just for the future clean-up of the state's coal mines although this is considered an underestimate. (ABS News: Lateline, 4/8/2016).
- WA has 11,000 abandoned mines although the figure could be far higher. A former WA mine inspector said closed mines were "*a gigantic legacy headache for government*" with taxpayers footing the bill for fixing up abandoned mines" (Weekend Australian, Dr Nic Dunlop, Legacy Warning in Mine Collapse November 2013, page 23).
- In South Australia, the failed rehabilitation and cleanup of the Brukunga pyrites mine had, by 2012, cost the state government $26m of taxpayers money but again, this is unlikely to be enough **(***The Advertiser* March 07, 2012).
- The Discussion Paper (page 52) acknowledges that the community does not want any more situations like Brukunga, which it blames on the *"legacy of old, outdated regulatory systems and practices of the past".*
- However**,** DSD's failure to demand adequate rehabilitation standards for Hillside sets up the real possibility that this situation will be repeated on YP.

Changes required

- *The Government MUST develop a new set of standards that more accurately reflect leading practice rehabilitation practices, as per the Ranger Uranium Mine plans which require all contaminated material and waste rock to be returned to the pit for safe encapsulation, followed by complete backfilling of the void, and the reinstatement of a landscape similar to that which existed pre-mining.*
- *An independent Advisory Committee should be established, comprising rehabilitation experts external to the mining industry or Government, to advise on appropriate rehabilitation plans for each newly proposed mining operation in agricultural land.*

5. Bonds

"*We've had companies for too long that have been allowed to put aside just a fraction of what it costs to keep their mines safe and what it costs to return those mine sites to the community, to whom they fundamental belong, at the end of useful life (Victorian Premier, Mr Andrews Arup, The Age, 14th April 2006)*

- This statement was in response to the findings of the Hazelwood coal mine fire inquiry (see Hazelwood Mine Fire Inquiry *Report: 2015/16 Volume 4)* which showed the amount of bond money set aside for rehabilitation by the region's mining companies was
  - seven times lower than the mining companies' own estimates of the cost required ($276 million) and
  - up to 23 times lower than the estimates provided by independent consultants *(Arup, the Age April 14, 2016).*

- These findings prompted the Victorian Premier to increase existing bonds to 100% of the mine's self-assessed rehabilitation costs by January 2017 and develop a more effective system to set

future rehabilitation bonds. In doing so, he rejected any suggestion that an increase in bond monies would impact on jobs*:*

> *"Let's not have any of this talk that jobs are at risk. They are not at all. Safety comes first, doing right things comes first and for too long, a number of very, very profitable businesses have not put aside enough money to be responsible, to do the right thing (ABC; The WORLD TODAY: Interviewee Tom Nightinggale, 15 April 2016)*

- The SA Government has not yet determined the amount of bond money Rex will be required to set aside to cover all clean-up and rehabilitation costs for Hillside. However, this must be sufficiently large to ensure that:

  The community and future generations should be left with no residual liability for site rehabilitation or maintenance" **(**DMITRE, Regulatory Guidelines for Miners, p. 35).

Changes required

- *The Mining Act must be amended to include a commitment to ensuring that the financial surety required from mining companies covers 100% of the estimated rehabilitation liabilities.*

- *That estimate must be based on the amount determined by an independent assessor, external to government and the mining industry.*

- *This bond must also cover all environmental clean-up costs incurred during the life of the mine as well as full rehabilitation costs post-mining.*

- *In terms of an appropriate financial assurance model, a hybrid system (as suggested on page 55) seems the most appropriate – ie a company/mine specific component (the largest amount) and a sector-wide levy.*

- *Any pooled funds should not be derived from Royalties.*

6. Care and Maintenance

- Companies can avoid complying with their rehabilitation commitments by placing the mine in care and maintenance mode. This allows them to undertake minimal work each year without ever formally closing the mine. This has become a common occurrence. In Queensland, for example, there have been no mine closures in the past 33 years (*P. Erskine, Landline, 19th Sept 2015*), with almost 100 now under care and maintenance.

- In South Australia, three of the 5 mines located south of Goyder's Line are in care and maintenance, while one - Brukunga – has been the subject of a taxpayer funded rehabilitation cleanup since its closure decades ago. Only one of the five mines – Kanmantoo – is still operating (*GPSA, power point presentation, Maitland, 2 Feb 2017*).

- There are a further five mines in agricultural areas either approved or waiting PEPR signoff. This includes the Hillside mine on YP. Its Tenement Document also provides a care and maintenance option. Condition 39 states that

*If the Director of Mines is of the opinion that the mining operations on the Land have substantially creased for two years of more, (s)he **MAY** require that the tenement holder submit a decommissioning and rehabilitation plan.*

- That a vast, open cut mine such as Hillside can be mothballed for at least two years with minimal rehabilitation requirements may be acceptable in remote areas of the State but in not appropriate in a settled agricultural and tourist region like YP.

Changes required

The requirements regarding care and maintenance must be significantly tightened.

- *Strict criteria (especially non-negotiable time limits) must be set to ensure companies cannot avoid their rehabilitation obligations by this means.*
- *The Director of Mines' discretion to decide whether or not to require a company to submit a decommissioning and rehabilitation plan after the specified time limit has expired must be rescinded.*
- *Any negative impacts on the environment, human health and agricultural/tourism productivity resulting from a care and maintenance situation should trigger compensation payments to the affected parties, with company bond large enough to cover such potential liabilities.*

7. Transfer of ownership: *On-selling of operations*

- On-selling often involves a transfer of ownership to a junior company which lacks the financial capacity to rehabilitate the site.

- Example; in 2016, Rio Tinto proposed the sale of its mothballed Blair Athol coal mine to TerraCom for $1. As part of the deal, an $80m financial assurance held by Rio Tinto for rehabilitation of the site was transferred. This was well short of the $100m and $300m independent analysts claimed would be needed and which the new owners - described as a "loss-making minnow – would be unable to meet. The sale was opposed on the grounds that Rio Tinto's aim in selling was to clear its books of all such financial liability. This would ultimately result in all risks being put back on the Queensland taxpayer (ABC News, 12 July 2016).

- With the proliferation of junior exploration/mining companies during the recent mining boom, the risk of such on-selling in the future has increased. Rex Minerals, for example, is a junior company which, to date, has been unable to attract finances for either its full scale or small start-up operations. It does not have the financial reserves available to the big miners such as BHP Billiton or Rio Tinto. Hence, if it runs into financial difficulties after operations commence, on-selling may become the only option.

Changes required

- *Any proposal by a company to transfer ownership to another company must be subject to rigorous assessment by the Government.*
- *If the assessment indicates the company does not have the technical or financial capacity to fulfil its operational and rehabilitation obligations, the Government must have the power to veto such transfers.*
- *Details of the proposed sale must be made public and the local community must be given the right to comment*

- *Results of the Government investigation must also be made public.*
- *The Government's decision to approve a*
- *The above requirements must apply to all on-selling proposals whether they occur*
    - *prior to the commencement of operations*
    - *during operations or*
    - *when the original company has completed its operations.*
- *A mechanism must be introduced to appeal against the Government's decision.*

8. Relinquishment of tenement

- Relinquishment of tenement, involving the transfer of ownership of the closed mine site to another party, - inevitably entails transfer of responsibility for dealing with any future contamination issues.

- For example, at the point of relinquishment, Rex's aim is "*to hand over a physically and chemically stable landform … where the new owner can continue agricultural pursuits with minimal inputs…*" (Extended Feasibility Study - Description of Operations of the EFS). The same document notes: the relinquishment of Hillside will require *"arrangements for future management and maintenance that have been agreed to by the subsequent land owners or land Managers"*.

- Why would any third party agree to take over responsibility for the long-term management of a site such as Hillside, involving an open pit, massive waste rock dumps (albeit nicely rounded and possibly revegetated), a web of open haul roads, and contaminated waste sitting below the surface?

- And if there was such an agreement, what protections could be put in place for these third parties to ensure they do not have to bear responsibility of responding to or dealing with anyy contamination issues that may not arise until decades after mine closure?

Changes required

- *At the point of tenement relinquishment, YPLOG supports the following to be retained or added to the Mining Act (page 47 - 49)*
    - *the Minister must have "a clear power to prohibit or delay the expiry of a tenement until all environmental and other obligations are complied with"*
        - *The completion of full rehabilitation of the site*
    - *'the explorer or operator ..publicly release a notice of intention to surrender a notice of expiry for public comment"*
    - *an ability to pursue an operator or management "in relation to any environmental damage that has occurred on the site after the tenement has expired*

- *to protect non-mining third party owners from responsibility for long-term monitoring, maintenance and contamination clean-ups post-transfer:*
    - *Requirement that "the company provides sufficient funds and security to the Government or a government approved third party" "to cover all on-going potential risks" (page 61)*

- *The Minister must consent to the transfer of ownership to a third party at the point of relinquishment to ensure the third party fully understands his/her long-term obligations and has the capacity to comply with those obligations.*

9. Cancellation of tenement

- A present, the "*Minister or Mining Registrar may cancel or suspend a tenement for various contraventions of the Mining Act or Regulation*".

- But does this only apply after operations commence? It is our understanding that a tenement cannot be cancelled before operations commence, unless the company withdraws its plans completely or submits alternative plans that are judged inconsistent with the original.

- As already described re Rex Minerals' change of direction, local residents have found that latter process completely unsatisfactory.

Changes required

- *If a company cannot proceed with plans as documented in its original approved MLP, approval must be withdrawn and the company must, if it wishes to proceed, submit an entirely new MLP.*

10. Royalties (page 95)

Rate of payment

- The Discussion Paper *(p. 40)* focuses on the non-payment of these fees, again side stepping the most important question – ie is the amount of royalties paid by each company sufficient?

- Under Part 3, S17 of the *Mining Act 1971*, the royalty rate per tonne for mineral ores such as copper and iron are set at 5% of market value at the time the minerals leave the mine gate. However, under S17(A), for "new" mines a reduced royalty rate of 2% applies for the first five years.

- This seems woefully inadequate. In the case of Hillside, for example, the company estimated royalty payments of only $30m per year. It will be much less under the smaller start-up, especially if a "discounted rate" for its new mine status is applied. This amount hardly constitutes petty cash for the government. Why should South Australia's minerals be sold off to private, often overseas owned companies at bargain basement prices?

- To exacerbate the situation, under S17(10) the Minister may, on application by the company, waive royalty payments either wholly or in part, or reduce the rate at which royalty is payable if the Minister considers the standard payment would affect the viability or profitability of the mining operations.

Total royalties paid

- Royalty payments are frequently used by the mining industry and pro-mining governments to highlight what they consider to be the industry's major contributor to the state's economy.

What is rarely stressed is that royalties are the monies paid to buy resources owned by the people of South Australia.

- The Discussion Paper (p 39) states the Government receives $140m in royalties (presumably per 12 month period and from all mining sectors – both mineral ores and extractive minerals).
  - How much is used to fund DSD's administration and regulatory costs and the Extractive Areas Rehabilitation Fund, neither of which contribute to the state's economy and
  - How much is left over for the benefit of the SA community?

  These figures are not provided in the Discussion Paper.

- To what extent are these "royalties" offset by
  - the Government having to pick up costs for failed rehabilitation – eg Brukunga – or
  - Government grants and other financial incentives provided to the industry via such programs as the PACE and PACE copper grants?

- In other words, how much do royalties really contribute to the non-mining sector of the SA economy and are they an adequate financial trade-off for the community upheaval, and long term environmental degradation left behind poet- mine-closure?

Changes required

- *An independent inquiry into Royalties paid to the State Government is required*
  - *to determine whether the market value percentage currently in place is sufficient*
  - *to identify the nett gains to the South Australian economy, once DSD payments, PACE grants etc. have been subtracted.*

- *Reductions in this percentage for new mines should be removed.*

- *For each mining operation, the total amount of royalties compared with net profits should be publicly reported on an annual basis.*

11. Personal Compensation and Company liability

- YPLOG understands that exploration and mining companies are required to carry $20m in public liability. This amount is ludicrous.

- By way of comparison, even a small community-based organisation such as YPLOG, which possesses no infrastructure, employs no staff, undertakes only very limited community meetings etc. also has a $20m personal liability cover.

- This will barely scratch the surface if a mining operation
  - causes contamination of a farmer's grain or livestock or
  - Starts a major bush fire such as the Pinery fire in 2015.
  - Causes major health problems for local residents.

Changes required

- *The Government must require each company carry at least $100m in personal liability.*

- *If any compensation claim is made against a company, there should be a reverse onus of proof – ie rather than the individual having to prove the mining activities caused the contamination, it should be up to the mining company to prove that its operations were not responsible.*

CONCLUSION

This submission touches on some, but not all, of the issues YPLOG and its members (both farmers and local residents) have experienced in their interaction with exploration and mining companies.

These experiences indicate that, contrary to statements in the Mining Act Discussion Paper, the current legislation and regulatory framework are not working well.

The current system is heavily geared in favour of the mining industry to the significant detriment of the community, local residents and landowners.

Given the limited time available, this submission was not able to cover all of our concerns, nor address every discussion point raised by the Discussion Paper.

However, we trust it has gone some way to alerting DSD and the Government to the fact that major changes are required, not just to the legislation and regulations, but to how these components are interpreted and administered.

Joy Wundersitz

On Behalf of YPLOG
31 March 2017