



Residents for Responsible Mining  
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## **PROPOSAL TO PROTECT AGRICULTURAL COMMUNITIES FROM MINING**

The State Government has been asked to amend the *Mining Act* to protect agricultural communities from impacts of mining for bauxite, coal and iron ore associated with applications that cover the south west corner of WA from Geraldton to Albany. Public interest groups related to agriculture, tourism and conservation say the law must be changed to lift the blanket threat to agricultural communities.

Controversy related to bauxite mining at Chittering and Manjimup, and coal mining at Margaret River has prompted Residents for Responsible Mining (R4RM) to identify necessary changes to laws to protect their communities and lobby the State Government to make the changes. They say the south west corner of WA is where most of our food is grown and most communities live, and it must have adequate protection by Government from powerful mining companies which have huge funds compared to family based farms trying to protect their interests.

The Premier, Colin Barnett and key Ministers have been sent a '*Proposal to Protect Agricultural Communities in Western Australia from Mining*' (attached) which calls on the State Government to change the *Mining Act* to:

- Identify where private land subject to mining tenements is either less than 1,000 hectares in area or abuts a farm of less than 1,000 hectares;
- consider if the land use is agriculture, viticulture, horticulture, tourism and rural residential;
- consider impacts on ground and surface water where water is required by farms;
- consider impacts of mining on forests and other natural areas near farms which supports tourism amongst agricultural communities;
- require the Department of Mines and Petroleum to audit these criteria across existing mining tenements covering the south west and if two or more apply then endorse the tenement to 'exclude bulk commodity mining' for bauxite, coal and iron ore.

The proposal excludes mining for bauxite, coal, iron ore and mineral sands that are subject to Agreements Acts that were used in the past to provide for bulk commodity mining.

R4RM and other public interest groups say:

- once mining operations begin on small farms the farms become 'neighbours from hell' due to noise, dust and congestion of local roads from bulk haulage;
- marketing of food produce and of food and wine related tourism requires protection of 'clean and green' image which is harmed by large scale mining;
- irrigation horticulture and viticulture is associated with essential water sources and these are at risk where bulk commodity mining disrupts the water table;
- farmers are subject to strict bans on clearing of native vegetation and it is unacceptably inconsistent for miners to be allowed to destroy State forest and other native vegetation within the same agricultural communities.

The public interest groups say the Barnett Government must make the necessary changes to the *Mining Act* to protect agricultural communities before the 2013 State Election.

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## **PROPOSAL TO PROTECT AGRICULTURAL COMMUNITIES IN WESTERN AUSTRALIA FROM MINING**

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## **A. Explanatory Note**

### **1. Background to the problem**

With each mining boom, the mining industry reviews opportunities for new projects. Traditionally some of these are successful but most are not and some are more about increasing share price than actually mining. The current mining boom is unprecedented in that, for the first time, speculative mining companies are targeting a large part of the south west land division of WA for mining projects on private agricultural land, parks and forests.

Only 7% of land in WA is private freehold land and most of that is concentrated in the south west of the State, roughly south west of the line between Geraldton and Albany. It is also where most of WA's food is grown and where the vast bulk of WA's fast-growing population lives, works and recreates.

Until the late 1980s, the State required all bulk commodities (coal, iron ore, bauxite) to be mined under State Agreement Acts. This was because these minerals were seen as rare and of "strategic importance", the scale of (usually surface) mining operations and transport infrastructure was by definition very large and the State wanted binding commitments from miners to undertake secondary processing. Since about 1990 the State's position on State Agreements has changed and the mining of bulk commodities is usually treated much like any other mining project. So, for example, in the past the State played a leading co-ordination role when a mining company wanted to start up a bulk commodity mining project, whereas now the mining company often "goes it alone" in terms of acquiring mining rights under the Mining Act 1978.

### **2. The problem**

In the past 3-4 years it has become apparent that the current mining boom is targeting the south west of WA for bulk commodity mining indiscriminately. In the blanket pegging that has taken place, little or no consideration has been given to the existence of communities and rural economies founded on agriculture, food growing and tourism and who depend on limited local infrastructure and the health of surrounding native vegetation, eco-systems and water resources for a sustainable future. In addition, miners have included areas where the rural residential population has increased exponentially in the past 30 years, such as Margaret River, Chittering and Avon.

In some cases, aspirational miners are seeking to re-hash projects that have been drilled and studied by large companies in previous decades and found to be unfeasible for economic, technical, social and environmental reasons. In other cases the projects are "first timers" such as the Margaret River Coal mining proposal. The multiple problems that have arisen over the past 3 years from this set of circumstances and continue to exist in the south west land division include:



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- open-ended uncertainty for entire rural communities through having a mining tenement granted over the area and the associated impacts on land values, economic investment and landowners' "collateral"
- the unacceptable risk to the security of rural businesses and investments which is being placed on farmers, rural business owners and residents in traditional agricultural areas
- the technical and legal processes lasting years imposed on individual farmers and communities to justify protection of their investment and lifestyle from the impacts of mining
- the very high cost of those processes in terms of time and money for rural residents
- the fundamental conflict with local planning laws in Shires where exploration and mining is not a permitted land use and/or a land use considered incompatible with existing economic activity, traditional land uses and strategic environmental values
- the current fundamental lack of information and know-how within government agencies and the mining industry in relation to pre-1899 freehold land
- the secretive and sometimes misleading methods of mining companies in dealing with Shires and individual farmers resulting in conflict within communities
- the fact the technical and legal processes imposed on communities often repeat those undertaken in previous decades, and will continue to be repeated indefinitely into the future (eg. Bindoon where the same mining project is being proposed for the third time in 30 years)
- rural Shires being technically and economically unresourced to deal effectively with mining processes on behalf of their communities
- the unsustainable imbalance between farmers/rural residents and the 'deep pockets' of mining companies, including foreign backed mining companies
- the existential threat to food security and the food producing areas of the South West
- the existential threat to critical eco-systems and scarce water resources which underpin agricultural, tourism and residential investment
- the serious health risk presented to rural communities from dust emissions from large scale mining, processing and transport of bulk material (especially bauxite)
- the conflict with the environmental imperative to strategically protect WA's south west biodiversity hotspot and prime agricultural and tourism communities comprising about 2-3% of the State
- speculation on the Australian Stock Exchange by WA companies claiming ownership of "mineral resources" located on private land (including pre 1899 land) owned by farmers who actively object to mining and have given no consent or access
- potentially serious corporate malfeasance including misleading of shareholders and Chinese investors regarding ownership of mineral resources
- potential damage to the State's reputation and exaggeration of sovereign risk through irresponsible corporate behaviour and capricious use of processes

There is no avenue available to communities, even as represented by their local government, to address many of the above issues. The only opportunity for communities to raise concerns about some of these issues is through appeal to the Environmental Protection Authority, a process fraught with legal and scientific complexities. Community-related issues and scientific complexities are considered far too late given that so many of the risks to communities are self-evident or have already been tested decades before.



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The increasing conflict between mining and agriculture has emerged as a national problem and is recognized in the National Food Plan refer: <http://www.daff.gov.au/nationalfoodplan/national-food-plan>

## **B. The Policy Solution**

### **1. Approach**

The policy approach taken in this proposal is the result of considering the existing Swan Valley Act 1995, the draft Hills Planning Bill 2010, Mining Act 1978 and similar “protection’ legislation in other jurisdictions. We have also consulted lawyers at Lavan Legal (who have worked on the protection of the Margaret River region from mining in the face of recent coal mining proposals) who agree that an appropriate solution to the problem can only be achieved through a clearer integration of forward land-use planning criteria into Mining Act processes.

In terms of achieving the objective of delivering relative certainty for the continuation of existing rural land uses and for the security of future agricultural, tourism and residential investment especially in the south west land division of WA, it was found that the key problem with the “planning committee” approach taken in the Swan Valley Act and the Hills Planning Bill is that it has no legal effect in terms of approvals under the Mining Act 1978. In our view this does not achieve the desired result of certainty and balance but potentially adds another administrative layer to approvals. The Mining (Community Protection) Amendment Bill recently introduced into parliament does not address the question of transparency and therefore may not render the process more certain for miners or landowners, however the Bill has brought long overdue focus on the issue.

In this paper we propose a review stage to be added at the front end of the mining tenement application process that will eliminate areas from the application of the Mining Act according to specific, non-discriminatory criteria. We believe this is the only approach that will address the multiple problems outlined above, and provide clarity and certainty to rural residents and mining companies in a reasonable timeframe.

### **2. Mining Act 1978**

S120 of the Mining Act is the only section which deals with the interaction of the Minister for Mines’ power to grant mining approvals and the issues raised by prevailing land uses and planning restrictions contained in an applicable Town Planning Scheme (See Attachment 1).

S120(1) of the Mining Act applies to the grant of all tenements, including Exploration Licences. The Minister, warden or registrar must consider how a local planning scheme affects the land concerned BUT this section expressly does not prohibit the grant of a tenement or the conduct of mining operations (which includes exploration activity). As we know, Exploration Licences have been granted in Chittering and Toodyay despite their respective Town Planning Schemes  
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prohibiting mining operations, and exploration activities have been conducted under those licences. Despite clause 120(1), the Mining Act has routinely overruled town planning restrictions and it is not clear that any attention is paid to local planning schemes by the Department of Mines.

Under S120(2) of the Mining Act the Minister for Mines is obliged to consult the Minister for Planning for a recommendation if a local authority or the WA Planning Commission informs the Minister for Mines that the grant of a Mining Lease would authorize activity in breach of a local planning scheme. However the Minister for Mines is not obliged to follow the Minister for Planning's recommendation.

### ***3. Current Industry and Agency attitudes to mining on private agricultural land***

Operators in the WA mining industry often state the industry view that "mining overrules planning". This is the common understanding of the effect of S120 as outlined above; that is, the Minister for Mines does not have to defer to local planning laws at all in granting exploration and mining tenements, and in the case of a full scale mining proposal he must only consider a recommendation of the Minister for Planning if the local Shire or WAPC notifies him that mining would be in breach of local planning laws, but the Minister for Planning's recommendation is not binding. It is also not clear what criteria the Minister for Planning considers in making his recommendation to the Minister for Mines under S120(2).

Under the Mining Act:

- farmers have the right to say NO to would-be miners accessing the top 30 metres of their land, and
- all pre 1899 freehold land is excluded from the Mining Act and can only be mined for bulk commodities if it is successfully brought under the Act and effectively re-zoned to 'industrial' use giving rise to potential claims for loss of amenity and damages from neighbouring landowners.

Neither of these fundamental issues is well-understood by rural landowners, miners or government agencies. A proper understanding of these issues has become critical now that the current mining boom has prompted interest in the south west agricultural region as a prime mining target.

The decision on 15 June 2012 by the Mining Warden in *Darling Range South Pty Ltd v Ferrell and Others* has highlighted the basic incompatibility between established rural based economies or land uses and the aspirational plans of large-scale miners. The decision points to the need to review how the social impacts of mining speculation on private land should be managed under WA legislation, taking into account the major increases over the past 30 years in population, population density, agricultural and tourism investment and the fragility of the natural environment in the rural South West. It is notable that the Warden reached his decision



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on the basis of comprehensive objections without specific reference to planning in the context of S120 of the Mining Act 1978.

In R4RM's discussions with the Director General of Mines in late 2010, it was stated that the Department was in the process of considering a "Social Impact Policy" in relation to mining. This was partly a result of the unprecedented large-scale encroachment of mining company activity generated by the mining boom into freehold land areas in the south west of the state with long-established land uses and growing residential communities. We do not know the current status of this policy however this proposal may well address the issue.

#### **4. Land intended to be protected**

The intention of the policy outlined in this proposal is to eliminate land from bulk commodity mining based on non-discriminatory criteria which show, when considered as a whole, that exploration or mining of bulk commodities in that location is unsustainable socially (including economic impacts), technically and environmentally. Relevant criteria are considered to be:

- density of rural population / average size of freehold lots
- local town planning scheme provisions and traditional local land uses
- location in or proximity to pre-1899 freehold land exempt from the Mining Act
- location in or proximity to river catchments and groundwater resources
- location in or proximity to agricultural, food growing or wine growing businesses
- location in or proximity to State Forest, Conservation Parks, Wetlands in an environment-based tourism area
- location in or proximity to known habitat of listed Endangered Species and rare flora

Much of the planning policy that supports this approach has already been considered by the WA Planning Commission and must now be applied in the mining process. Some examples are: State Planning Policy 2.5 Agricultural and Rural Land Use Planning ref: <http://www.planning.wa.gov.au/publications/1167.asp>; Warren-Blackwood Rural Strategy ref: <http://www.planning.wa.gov.au/publications/1208.asp>; South West Framework ref: <http://www.planning.wa.gov.au/publications/1155.asp>; Avon Arc Sub-Regional Strategy ref: [http://www.planning.wa.gov.au/dop\\_pub\\_pdf/AvonArc01.pdf](http://www.planning.wa.gov.au/dop_pub_pdf/AvonArc01.pdf); Wheatbelt Land Use Planning Strategy (in development) ref: <http://www.planning.wa.gov.au/670.asp>. These planning policies are ignored in the mining process and, disturbingly, recent proposed amendments to State Planning Policy 2.5 actually render that Policy inapplicable in relation to mining applications, explicitly reducing agricultural protection.

### **C. Outline of proposed legislation**

#### **1. Geographical definition**

- Anywhere in WA
- Exclude land already the subject of a State Agreement Act (eg. Alcoa, Worsley, Collie coal, mineral sands). These agreements will not be affected by the legislation



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## **2. Other definitions**

- Act - means the Mining Act 1978 (WA)
- Bulk Commodity Mining – means the conduct of Mining Operations in respect of bulk mineral resources including bauxite, coking coal, thermal coal and iron ore
- Primary Number – means an area 8km x 8km (5 minutes x 5 minutes), or part thereof, comprising 25 Blocks (graticular sections) of 1 minute x 1 minute, as defined in the Graticular Boundary System used by the Department of Mines refer: [www.dmp.wa.gov.au/documents/Info7\(4\).pdf](http://www.dmp.wa.gov.au/documents/Info7(4).pdf)
- Mining Operations – the same meaning in the Act. Includes exploration and other activities ancillary to mining.

## **3. Purpose of the legislation**

- Generally, the management of food security by the protection and encouragement of traditional agriculture, horticulture, food production and other productive uses compatible with rural zoning, the protection of the natural environment and water resources, the reduction of nutrient and salinity levels and other contaminants in river catchments, the protection and promotion of tourism that complements rural zoning and the provision of certainty to farmers, food producers, rural residents, tourism operators and miners regarding land use priorities.
- The protection and encouragement of agriculture, viticulture, horticulture and food production activities compatible with rural zoning
- The protection of hobby farming and rural residential land from land uses that are incompatible with rural-residential zoning.
- The protection and encouragement of tourism and tourist facilities that complement rural zoning.
- The protection of water catchments, surface water resources and groundwater resources for agriculture, viticulture, horticulture and residents and the discouragement of other activities that have high water demands.
- The prevention of Bulk Commodity Mining where it is incompatible with traditional agricultural activities and agri or eco-based tourism
- The protection of native vegetation, biodiversity and ecosystems to reduce land salinity and salinity in water catchments, rivers and wetlands, soil acidification and loss of topsoil
- The protection of native vegetation that supports eco-based tourism from clearing for the purpose of Bulk Commodity Mining.



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**Note:** Under the proposal, the primary amendments would be to processes under the Mining Act or Mining Regulations. There may also be consequential amendments to other legislation.

The proposal outlines a non-discriminatory and effective approach that could be simply administered from information supplied by Shires, Landgate, Department of Environment and Conservation and Department of Water via the Department of Planning to the Department of Mines as part of the process under S120 of the Act, applying transparent criteria.

This proposal is not intended to be prescriptive as to the exact amendments, processes or officer responsible under the Mining Act – there are people much better qualified to work out this detail. There are other agencies and alternative ways to conduct the same process, however it is considered more efficient if the process is part of DMP's responsibility.

#### **4. Outline of proposed amendments**

*When does the process apply?*

a. Where there is:

- i. any application for a mining tenement or exploration licence; or
- ii. any application under S37 to bring private land under the Act

paragraph b) will apply.

*Criteria*

b. If 2 or more of the following criteria apply to all or part of a Primary Number comprised in an application under paragraph a), the [Warden] will determine that the blocks within that Primary Number will be endorsed in accordance with paragraph c):

- i. the average freehold lot size within the Primary Number is less than 1000 Hectares or the Primary Number abuts a freehold lot of less than 1000 Hectares;
- ii. the principal land uses within the Primary Number include rural, agriculture, horticulture, viticulture, rural residential, small-holding, tourism, sensitive use (eg school, aged care) or similar
- iii. the freehold lots within the Primary Number depend on local groundwater and/or surface water and water courses for domestic or business purposes
- iv. the Primary Number contains or abuts a freehold lot or lots which is exempt from the Act by reason of being granted in freehold before 1 January 1899;
- v. the Primary Number contains or abuts a Primary Number that contains rare fauna, endangered species, or native vegetation which supports local tourism



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*Endorsement to “Exclude Bulk Commodity Mining”*

- c. Any mining tenement granted under the Act as a result of an application referred to in paragraph a) will be endorsed by the [Registrar?] with “Excludes Bulk Commodity Mining” in relation to those Primary Numbers in the tenement which have been found by the [Registrar] to fall within the criteria in paragraph b).

*Existing applications and tenements*

- d. Within 90 days of the amendment coming into effect, any mining tenement applied for or recommended for grant or in force at the date of the amendment, will be reviewed by the [Registrar] against the criteria in paragraph b) and, if applicable will be endorsed as stated in paragraph c).

*No impact on existing State Agreement Acts*

- e. This amendment will not affect the operation of any mining tenement granted pursuant to any State Agreement Act that confers rights to conduct Bulk Commodity Mining.



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ATTACHMENT 1

where —

(a) an application has been made for a mining lease or a general purpose lease; and

(b) the local government or the Western Australian Planning Commission has, in writing, informed the Minister and the Minister for the time being administering the [Planning and Development Act 2005](#), that the mining lease or general purpose lease would, if granted, authorise the carrying on of mining operations contrary to the provisions of a planning scheme referred to in subsection (1),

the Minister shall not dispose of the application until he has first consulted the Minister for the time being administering the [Planning and Development Act 2005](#) and obtained his recommendation thereon

## **MINING ACT 1978 - SECT 120**

### **120 . Planning schemes to be considered but not to derogate from this Act**

(1) In considering any application for the grant of a mining tenement the Minister, warden or mining registrar, as the case requires, shall take into account the provisions of any planning scheme in force under the [Planning and Development Act 2005](#) affecting the use of the land concerned, but the provisions of any such scheme shall not operate to prohibit or affect the granting of a mining tenement or the carrying out of any mining operations authorised by this Act.

(2) Without affecting subsection (1),

