

ECONOMIC DEVELOPMENT AND INFRASTRUCTURE COMMITTEE
Inquiry into greenfields mineral exploration and project development in Victoria

Melbourne — 19 September 2011

Members

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Mr R. Spence, Chief Executive officer, and
Ms A. Lyon, Deputy Chief Executive Officer and Legal Counsel, Municipal Association of Victoria.

The CHAIR — Welcome. The Committee is an all-party parliamentary committee and is hearing evidence today on the Inquiry into greenfields mineral exploration and project development in Victoria. All evidence taken at this hearing is protected by parliamentary privilege. However, comments you make outside the hearing are not afforded that privilege. Rob, could you please state your full name and address?

Mr SPENCE — Robert Norman Spence, 260 Gore Street, Fitzroy.

The CHAIR — Are you here on your own behalf or on behalf of the MAV?

Mr SPENCE — The MAV.

The CHAIR — And Alison?

Ms LYON — Alison Lyon, Level 12, 60 Collins Street, Melbourne. I am here on behalf of the Municipal Association of Victoria.

The CHAIR — Any evidence that you provide today will eventually become public evidence. We would now like to hear from you.

Mr SPENCE — Thanks for the opportunity today. We have made a reasonably simple submission. Our comments follow very much from the previous discussion and the issues that have come to us from the councils. I would have to say that this is not an issue that would normally be high on our totem pole of issues in local government. It spikes in particular areas, like the Moorabool Shire that you were just talking about.

We have gone out to our members and tested their views, and I think there are probably three strands in the comments from councils. As I say, it fits pretty neatly with previous discussions you have had. One is about the timelines and when councils get involved in the process. When there is a prospective licence in an area that is being considered by the Department the councils are of the view that the sooner they are involved in the discussions the greater the opportunity to get sensible outcomes. The councils are a good representation of community views. They understand the sensitivities in an area and are able to provide advice and guidance in the licensing process and in the work plan exercise. I would say that is really the first key point that we wanted to make.

There is also pretty clearly a need for support to be provided to councils when they actually get these complex permits before them. I would use the analogy of the wind farm space, because it is similar. In the case of wind farms, the technical competence in the councils, particularly in rural councils, is not strong in dealing with wind farms or, for example, mining activities or extractive industries. Technical support from government to the councils would be a useful step in the process to allow the councils to properly consider what is before them, particularly if they end up with a Planning Permit application before them.

The other issue we want to talk about concerns buffer zones. There is an issue about growth development into the buffer zones and what it does to the development over time. We have seen it in extractive industries, particularly through the Dandenongs and in other parts of Victoria, where as developments have moved into the buffer zone, they have impacted on the capacity of the industry to continue to operate. We think there needs to be some protection of the buffer zone to ensure that the industry can complete its work program and then close the facility down before — —

The CHAIR — Opening it up?

Mr SPENCE — Yes, before you allow development. That is on one side in the planning and licensing space. On the other side, one of the issues we face with extractive industries and mining are that these are not rateable entities; so when the community has to deal with damage to roads and local infrastructure by significant industries, very little of the benefit comes in locally. Employment could potentially come in locally, but what we see is the deterioration in infrastructure assets, and there is a lack of capacity to actually recover that.

As they normally do, the councils have suggested that they would like the State Government to support them if it has major projects occurring. That is one option. I suppose the other alternative is that it provides the councils with the capacity to take a revenue stream or recover cost out of the industry. We have had discussions about that in the timber space over time and it has been really hard to do, but I am sure it is possible to put together a

model that would allow councils, if they are getting significant damage to road and bridge infrastructure, for example — —

Mrs PEULICH — A bit like the open-space contribution.

Mr SPENCE — Absolutely. It could work in exactly the same way. I am not saying you necessarily want to rate them, but there is a capacity to actually get recovery of costs of damage or potentially bridge upgrades. You need to think not only inside the space of the extractive industry or mine facility, but the impacts they have outside of that space until it hits the state road network. On the state road network, you would expect it to be dealt with by the state through the normal means.

They are probably the critical issues for us. Are there any other points that you think we need to make, Alison?

Ms LYON — I think that's it.

Mr NOONAN — Just to go to one of the first areas you mentioned about the technical expertise, having sat for a number of months on this inquiry, clearly there is a highly technical aspect to this industry. Where would you logically see that technical advice coming from, and at what stage would you see that advice being required in relation to the current process from exploration through to application?

Mr SPENCE — I think the critical times are in the area around the work program and in the planning processes. Again, I liken it to wind farms. My third step would be in policing the Planning Permit. What we have seen specifically with wind farms — —

Mrs PEULICH — But that is a shared responsibility, surely.

Mr SPENCE — That is a shared responsibility, but ultimately the council has an obligation to police the Planning Permits and local pressure will come on in the Planning Permit space. I think it is across those three areas. The discussions we have had with the State in the wind farm area have been that the State has made available resources to assist the councils to do that. That can be either buying an external support or it being provided by an independent state agency.

Mrs PEULICH — An independent state agency; so the comparative arrangements that have been put in place in relation to wind farms where a local government can choose to do it on its own with the assistance of the department or have it completely dealt with by the department, is that sort of a parallel?

Mr SPENCE — I think it is a realistic option in this model. You consider the local issues, what you require and you choose your path.

Mr NOONAN — Is local government pretty much written out of the planning process under the *Planning and Environment Act* when it comes to this sector?

Mr SPENCE — Yes.

Mr NOONAN — I think you have been quite critical of that, but critical in a constructive way, where you essentially say, 'If you deal us back in, we think we can have a productive role', essentially in trying to circumvent the sorts of examples we have been hearing about with our last witness in relation to Bacchus Marsh. Is that a fair assessment? In terms of amendments to the various State Acts, what would you most logically see as a way of facilitating that?

Mr FOLEY — Which is really about the model that you would want to engage with and how that would then be reflected in the legislation.

Mrs PEULICH — You are not talking about a special user overlay or something like that?

Mr SPENCE — No, we are not. I think it is a really good question. We have not tested the views of the councils about that in detail. The option of councils having choices as to the path they take is a reasonable one. Again, I liken it to the wind farm process. The concerns we hear from the councils are about the fact that they are not included in the process when the Minister ultimately has the capacity to call the thing in and actually deal with it, or has the authority to. They want to be part of that process, but I think we are going to find with

our membership a whole array of different choices or views about how they deal with that. I would need to really go out and assess that in detail to see where we end up with it. I am sorry I cannot take it much further, without doing that piece of work with them. I know I keep coming back to wind farms — —

Mr NOONAN — It is a fair example.

Mr SPENCE — But when we have tested the position with the wind farms — and they are the most current exercise that is similar to this — —

Mrs PEULICH — Exercising your mind.

Mr SPENCE — Well, it is exercising our mind every day, particularly in the Moorabool space, which is like Bacchus Marsh, with the development. Each council has a different view about the way the model should work. Some are committed to having a larger role in planning, and others are saying they would prefer not to have any. The flexibility, I think, is a good thing in this process. The mining industry model in Victoria was set up in 1850. It is a model from when mining was seen to be the lead industry, and there is enormous authority there at the centre of government. It seems to me that there needs to be more authority distributed locally in this space.

Mr NOONAN — Clearly one of your recommendations is to put statutory consultative mechanisms within the primary act.

Mr SPENCE — That is right.

Mr NOONAN — That is a very clear recommendation that you are making, which you say can protect commercial-in-confidence issues, but prior to a ministerial amendment to a council planning scheme actually going through. I suppose the real world suggests that people will go to local councils about local issues, and mining is no different there. As a first start, you are suggesting a recommendation for this committee's consideration is to strengthen the capacity for local government to have a very strong statutory consultative mechanism built within the Act, first and foremost, as a constructive step forward.

Mr SPENCE — That is right.

Mrs PEULICH — Does this need to be in the *Planning and Environment Act*? At the moment I think the planning process in Victoria is getting a bit of a caning for being fairly drawn out and convoluted and possibly in need of some streamlining, notwithstanding the fact that I do believe that consultation needs to be open and transparent and effective. Are you suggesting that it needs to be — —

Mr FOLEY — Just streamlined.

Mrs PEULICH — No, not at all. In actual fact, I have been very critical of local governments where they have conveniently mismanaged consultation in a way of getting a particular outcome. Does it need to be embedded in the *Planning and Environment Act* or are there other legislative instruments or commitments that could actually guarantee that outcome?

Mr SPENCE — Our recommendation is that it is embedded, so that it is a requirement.

Mrs PEULICH — Is that the only option that you have considered?

Mr SPENCE — No. The point I was making before is that the experience and the advice we have had, feedback from councils, has been off a very narrow base; so I would want to test that some more, I think.

Mrs PEULICH — I mean, you currently have control of tips and landfill — and let me tell you, in my neck of the woods that is not being handled particularly well.

Mr NOONAN — You are talking about the *Mineral Resources (Sustainable Development) Act*, as opposed to the *Planning and Environment Act*.

Mr SPENCE — That is right, we are.

Mr NOONAN — There is a difference. I have a question about compensation in relation to roads and bridges and the like. Again, I think this is probably a reasonable thing to flag, because we know, for example,

with some forms of mining you are talking about very heavy vehicles moving around local municipalities. Is there evidence in Victoria of damage being done or infrastructure essentially being diminished as a result of mining activities in Victoria? Have those led to disputes, and how have they been resolved, if they have?

Mr SPENCE — I am not aware of any in the mining space. I believe there have been some. In mineral exploration I would say no, or very few; in extractive industries, heaps. I am not aware of any satisfactory solution that has occurred.

Mrs PEULICH — Come up with one.

Mr SPENCE — Yes, I know.

Mr NOONAN — But in fairness, there are some suggestions in your submission. You talk about the restrictions, essentially your lack of capacity to recover in this industry or sector, because these are not rateable industries. You are putting that on the table as a very real issue that your members are experiencing.

Mr SPENCE — Absolutely. And it is common across a lot of industries where there is not rate capacity to do it, so it is in timber, minerals — —

Mrs PEULICH — And it is a legitimate claim on behalf of local government, which is having to pick up costs.

Mr SPENCE — Absolutely. When you try to assess or try to recover dollars, you get into an argument over assessing who did what damage, what was general community use on the road or other industry use on the road and what was this particular industry's use on the road, so it is quite problematic. We have had a go over a number of years to find a solution to this, without ever coming up with a satisfactory solution.

Mr FOLEY — That is on the damage side of it, on the cost. There is also the other side of it, the added infrastructure and support that sectors need, whether it is from local government, local industry or whatever. That then flows through to extra demands on council for infrastructure.

Mr SPENCE — That is right.

Mr FOLEY — How do your members see some of those infrastructure demands being dealt with and factored into that bigger question of costs?

Mr SPENCE — What we suggest in this document is that in the preplanning process there is a proper consideration of what is needed to make the industry work within the area it is operating in.

Mr FOLEY — Are there particular types of infrastructure associated with mining and exploration that would not otherwise be there?

Mr SPENCE — You are looking at the capacity of bridges to carry loads and the capacity of the roads to take the loads. We are seeing it in grain movement now, with B-doubles on local roads and so on, with a massive amount of damage occurring. At least they are paying rates. As you increase the load on what are generally local and not very significantly constructed roads and bridges, then you do a lot of damage, and those things should be considered at the front end of any development, not at the back end of it.

Mr NOONAN — Just another compensation question — your last recommendation, 12, which I thought was an interesting one, goes to the potential impacts of reductions in property values. I wonder whether you can, again, elaborate on that, because it is not something that has been brought to the attention of the Committee to date. You are recommending that the *Mineral Resources (Sustainable Development) Act* be amended to extend the coverage to others to seek compensation. I gather within that might be local business or industry that could also seek compensation under the Act. Why have you put that in your submission?

Mr SPENCE — I think it really comes from an assessment of those people who have been affected by these industries, particularly extractive industries, within their area, and the impact they have had on their business or lives and the lack of capacity to actually get any compensation for that.

Mrs PEULICH — So incompatible businesses.

Mr SPENCE — Effectively, that is right — with dust and so on affecting their lives. It is brought forward to us by our members looking for an opportunity to see if there is a possibility to establish a basis for compensation. I know it is a difficult thing to do, and I know in a lot of these industries you are dealing with pretty marginal development. That is why I think we have not got a lot of extractive industries and so on in Victoria — not a lot of mineral development. But we thought it was something worth putting on the table. When you see the tensions around the Bacchus Marsh space, for example, which we heard about from the previous presenters, with a lot of people concerned about how they are affected there, some sort of support model for them might help.

Mr NOONAN — As an association, you see no clear model for residents in Bacchus Marsh, for example, to seek any compensation, as it stands at this point?

Mr SPENCE — No; that is right.

Mrs PEULICH — I am happy, except I wish we had given that thought also to tips and landfill when we granted permits — and the communities, of course, that are impacted on.

Mr SPENCE — Yes, very true — in your area, landfill land.

Mr NOONAN — Not limited to just your area.

Mrs PEULICH — Mostly — nearly all of them are.

The CHAIR — Thank you very much for the evidence you have given today. You will receive a copy of the transcript of today's proceedings. Please feel free to make changes to where you believe typographical errors have occurred, but not to any of the substance of it. Thank you very much for being here.

Witnesses withdrew.