

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

Melbourne — 14 December 2011

Members

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Mr M. Foley
Mr W. Noonan

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Mr K. Mealing, Secretary,
Mr J. Rathjen, President, and
Mr G. Graham, Member, Flynn Creek Coal & Power Consultative Committee.

The CHAIR — Welcome, Gentlemen. I'm Neale Burgess, the Member for Hastings and the Chair of this Committee. On my right — we should actually introduce ourselves.

Mr FOLEY — Martin Foley is my name; I'm the Member for Albert Park and the Deputy Chair of the Committee.

Mr NOONAN — Wade Noonan, Member for Williamstown.

Mrs PEULICH — Inga Peulich, Member for Southeast Metro.

Mr SHAW — Geoff Shaw, Member for Frankston.

The CHAIR — This is an all-party parliamentary committee hearing evidence today on the Inquiry into greenfields mineral exploration and project development in Victoria. Welcome to the hearing. All evidence taken at this hearing is protected by parliamentary privilege; however, any comments made outside the hearing are not afforded such privilege.

Would you be able to state your names, business address and whether you're representing an organisation.

Mr MEALING — I'll start off, if you like. Kevin Mealing, my address is 40 Rathjens Road, Flynn and I'm representing the Flynn Creek Coal & Power Consultative Committee.

Mr RATHJEN — My name is Jeff Rathjen of 30 Rathjens Road, Flynn representing the Flynn Creek Coal & Power Consultative Committee.

Mr GRAHAM — I'm Gordon Graham, 685 Flynn Creek Road, just up the road representing the Flynn Creek Coal & Power Consultative Committee.

The CHAIR — The evidence taken today will be taken down and become public evidence in due course. Would you like to do an oral presentation?

Mrs PEULICH — And before you do, tell us exactly where's Flynn in relation to Traralgon?

Mr MEALING — Traralgon?

Mrs PEULICH — Is that right?

Mr MEALING — We're about 16 or 17 kilometres east of Traralgon and basically east of the Loy Yang Power Station as well. I'm happy to start, if you like?

The CHAIR — Sure.

Mr MEALING — We're representing the Flynn Creek Coal & Power Consultative Committee, a group of concerned landowners from the Flynn area. Our group was initially formed with a common purpose of meeting to body to discuss the current and potential future impacts on our properties and business by the actions of Monash Energy Pty Ltd, and how we should respond to those, and acting as a representative body to promote dialogue with Monash Energy Coal Pty Ltd.

We would initially like to acknowledge the Economic Development and Infrastructure Committee for giving us the opportunity to speak with you guys today. We're not providing a written submission as such but have provided some accompanying documents to the committee staff as evidence to support our presentation.

The main focus of our address is around five specific interconnected issues that relate to the terms of reference of the Inquiry. The terms of reference items that they relate to are item (b), the regulatory environment, and item (i), the consideration of the costs and benefits of greenfields minerals exploration and whether there are opportunities to improve the management of potential conflicts between exploration and other land uses. That's what we will be focusing on today.

I will list the five issues and then Gordon, Jeff and I will attempt to highlight each of those individually, if we can. Firstly, a lack of the requirement for holders of exploration and/or mining and licences to provide a direct and regular communication with freehold landowners. Number two, a lack of sunset timelines on the issuing of

exploration and/or mining licences. Three, a lack of acknowledgment by government and the mining industry that the issuing of exploration and/or mining licences creates a blight on the land that negatively affects land values and impacts on communities. Four, a lack of an appropriate and transparent forum for raising and addressing disputes between landowners and holders of exploration and/or mining licences. Five, the need to have an established transparent and timely process for the determination of appropriate levels of compensation. That's our focus.

Firstly, some background. I've provided Yuki with some information on basically the Flynn Creek Coal & Power Consultative Committee and hopefully you've have an opportunity to look at that briefing, but just a summary on the background. We were formed late in 2004 in response to the Victorian Government's earlier granting of an exploration licence to Australian Energy and Power, APEL, in 2002 over the area occupied by our properties. The object of the exploration licence was to investigate the quantity and quality of the coal that lies beneath our properties to determine the economic feasibility of establishing a facility in the area to convert brown coal into ultra clean synthetic diesel fuel. This project was to also incorporate geosequestration technology, or carbon capture and storage, to limit the emission or greenhouse gases into the atmosphere. In 2004, APEL was purchased by Anglo American and renamed Monash Energy Holdings Ltd and later remained Monash Energy Coal Ltd. It was in 2006 that this project progressed from an exploration licence to a mining licence.

Now I'll start to work through the issues, if we possibly can. The issue of lack of communication: as has been indicated by other presentations made by to this inquiry, the landowners impacted upon by the granting of exploratory or mining licences received very little communication from the companies who are granted these licences. This was definitely the case with ourselves. Initially landowners received no direct correspondence from the original company who was granted the exploration licence, that is APEL. The Director of APEL did address a meeting of the local landowners at the Flynn hall in 2003; however this had to be organised by the Flynn farmers group.

As in our case, there can be significant promotion in the local press about economic and social benefits to the community for these mining projects when the exploration leases are granted but rarely are the landowners, who are most impacted upon, provided with the appropriate information by the mining companies. Mr Phil Pipier, President of the Mardan/Mirboo North Landcare Group, indicated to this committee during his presentation on 7 November that he had never been contacted by the mining company which has an exploration lease over his property.

Our committee met with representatives of Monash Energy Coal Ltd on regular occasions since they acquired the project from APEL, until late 2007. These meetings were undertaken to ensure that Monash Energy Coal Ltd regularly updated landowners about the state of the project, as well as acting as a consulting group for the development of draft principles to guide land acquisition. The purpose of this was to ensure that when Monash Energy Coal Ltd determined that it was ready to move to acquire the land to develop the project there existed a framework for individual landholder negotiation. We believe that if we had not formed this consultative committee then the provision of communication to the landowners would have been minimal, at best.

Mr Daryl White, Mayor of Latrobe City, indicated in his presentation to this committee on 7 November that Monash Energy is a fantastic company to deal with. From the transcript I've noted he stated: 'We have been right through the process with them to talk to landowners within their licence area'. Well, we're not sure which Monash Energy Mr White has been dealing with, or where he has sourced his information, but it's not the landowners he is said to represent. Two open letters in the past three years is all that landowners in our area have received from Monash Energy Coal Ltd.

As a result of the 2008–09 global financial crisis, Monash Energy decided to shelve its proposed coal to diesel project. As reported in The Age on December 3, 2008, Monash Energy is not walking away from the project entirely; however, there is no firm timeline that has been provided to landowners for this project to develop further. No information was provided directly to landowners from the company at the time of this decision, and it required lobbying from our committee for there to be some correspondence to individual landowners.

I'll just move through to the next: lack of sunset timelines on the issuing of exploration and/or mining licences. The Latrobe City and the Wellington Shire Council are the two local government agencies in which the area of Monash Energy Coal licence is located. Both of these LGAs have significant brown coal reserves and as such

both have indicated in separate presentations to this committee — one in person and one in a written submission — and they have raised concerns related to the banking of exploration and mining licences.

As has been our experience with Monash Energy Coal, there can be significant promotion in the local press about economic and social benefits to the community for these mining projects. Local and state governments can get caught up in the promotion, and the publicity related to job creation, however it seems that without the appropriate legislative frameworks, compelling the holders of the licence to move to development, a regular practice is that companies hold onto the licences and/or trade them as speculators for profit. It was reported that the APEL exploration licence was purchased by Anglo American in 2004 with the figure reputed to be \$100 million.

Ms Jones from Latrobe City, in her presentation to this committee on 7 November, used the phrase ‘use it or lose it’, and this should be a condition of the granting of licences. Wellington Shire’s Acting General Manager Development, Carly Bloomfield, in her written submission in this group, indicated that the Wellington Council believes that there should be a defined period that companies have to utilise their licence or forfeits their licence to the State. The mining licence that was issued to Monash Energy Coal Ltd over our land in Flynn is for 50 years. If Monash Energy Coal Ltd choose not to proceed with their project, this is counterproductive to maximising the development opportunities of the brown coal resource in the Latrobe Valley. It is not just bad policy but it is bad business for Victoria and the Latrobe Valley, in anyone’s language.

The third item: there’s a lack of acknowledgment that the issuing of exploration and/or mining licences creates a blight on the land with negatively affects land values. The uncertainty that the indefinite banking of exploration and/or mining licences creates can create significant impact on land values and uncertainty for local communities. Referring to Mr Daryl White, Mayor of Latrobe City, in his November 7 address, he made reference to landowners in small town such as Toongabbie and Glengarry, north of Traralgon. He said: ‘It is about communities getting spooked. The sort of views, if I’m a property owner in an area, I do not want to be surrounded by a new mine so I want to get out, I want to sell out, but I can’t because people who are potential buyers have heard it is going to be mined so my property will go down value-wise; I can’t get out’. Mr White stated: ‘I don’t think that that is good news and is not good planning’.

Unfortunately, this is exactly the same situation that is happening to Mr White’s rural landowner constituents in the Flynn area, impacted by Monash Energy Coal Ltd. You don’t have to live in a town to have a view that you don’t want to live next to a mine. Those families who wish to acquire a farm or hobby farmlet will not seek to purchase in an area that will be potentially mined or will be neighbouring a mine. The documents presented to this committee’s staff prior to the meeting include a letter from a respected Latrobe Valley real estate agent, Mr Keith Williams, who has documented his experiences of the direct negative impact of the issuing of exploration and/or mining licences on land values. Mr Williams has been a real estate agent in the Latrobe Valley for in excess of 50 years.

I’d just like to pause and I’ll defer to Gordon and Jeff who may wish to share their own personal experiences with the Committee of how the issuing of exploration and/or licences has blighted the land.

Mr GRAHAM — Thank you very much, Kevin. My name is Gordon Graham, I’m at 685 Flynn Creek Road, Flynn, 3844. I’m a fourth generation Graham to work the farm that is situated on prime agricultural land on Flynn Creek, that was settled by my great grandfather back in 1887, which is 130 years plus. I’ve lived there my entire life, the farm providing a home and a livelihood for my family. We’ve worked hard to ensure that it would be a viable concern for generations to come.

When APEL was granted the exploration licence in 2002 for the area, including our farm, our son and family were on the verge of taking over the running of the farm. The next few years brought uncertainty, there as no action or information forthcoming from the company or the Government on what was going to happen with our farm and the community. After three years of insecurity, our son and young family, frustrated with the future held in Flynn, packed up to go away for two years in the hope that the decision, one way or the other, would be made in the mining project. They have not returned after six years, having the job security in the west rather than the burden of the mining licence.

As landowners who developed and built up the farm — with the expectation of handing it over to the fifth generation, maybe the sixth — we’re disappointed our land is going to be dug up. However, we understand that

the development is a necessary evil for progress, but we expect — and should be entitled to as it is our property — be fairly valued at a price which is not hindered by a mining licence blight. Thank you.

Mr RATHJEN — My name is Jeff Rathjen. Thank you for giving me the opportunity to address this Committee. I'm part of a third generation farmer on this property, and the fifth generation who started living on it. Originally our family began with 60 hectares and we've gradually increased it and it's increased fourfold in my generation. I'm going to give you — I've lost it.

The CHAIR — That's okay; just take your time.

Mrs PEULICH — You might need a glass of water.

Mr RATHJEN — I'm going to give you some examples of the blight that's been put on the properties. The property's associated value is now under serious threat, and I will give the Committee some examples of the loss of land value due to the lack of interested purchase. Example one: between the years 2002 and 2005, a property that was eventually sold had to suffer a 20 per cent reduction in price, and that has to be remembered because that was early in the APEL era, it wasn't later on.

Another property which suffered the effects of the blight had a cash offer on the table, which was under shire valuation, and the purchaser was told of the exploration licence and just walked away, forget it.

The next example is another property, the owner of a substantial piece of property within the mining licensed area and his home property, which is some 100 kilometres away. For many years he was well informed and an astute opinion was that the property in the mining area was worth half the value of his home property. However, he too, sadly, had to sell it for an amount less than a third of the home property.

The last example I give, but certainly still apart from many more, is the case of a small dairy farmer under the same licence area who wanted to sell and expand to an area for financial security of his family. For him there was absolutely no use trying to sell, and he didn't put the property on the market.

Historically, farmers don't have superannuation. Farmers' super is back into the property for development and expansion. This blight created by these mining licenses means that landowners in the area have initially lost a considerable amount of their superannuation, simply by the devaluation of their property. Putting this into perspective for the Committee, just because you live in a certain street you have lost 20 or 30 percent of your superannuation or retirement fund from a single stroke of a pen of a public servant. Thank you.

Mr MEALING — Just to continue on that vein about the impact of the licences on land values, one suggested solution — and I think Keith Williams addresses it in his letter that we've given you a copy of it — a possible solution to overcoming disputes related to the creation of a perceived blight on the land created by the issuing of exploration and/or mining licences is to have the land valued at the point of granting an exploration licence and have the value CPI indexed. This cost could provide an objective price with which to negotiate land purchases at a later date. Subsequent land sales resulting from a blighted price impact would create a baseline for compensation discussions. Cost of these land values themselves could be met by the licence holder; however, coordinated by a company engaged independently by the State or Local Government, so there is a possible alternative of actually reducing the impact of having land values and a blight affect by the issuing of exploration and/or mining licences.

I'll move through of the other items, if I possibly can: lack of an appropriate and transparent forum for raising and addressing disputes between landowners and holders of exploration and/or mining licenses. Alex Arbuthnot, from the VFF, addressed this committee on 19 September. Looking at the transcript of this discussion, Mr Foley indicated to Mr Arbuthnot that: 'We have not seen a lot of conflict between exploration and other land uses'. I am sure that this is partly due to good leadership from the VFF. Large areas of Victoria have been subject to exploration licence applications with remarkably small amounts of community disputation and a lot community support the further you get out of Melbourne. Our community acknowledges the work of Alex and the VFF, as Alex has provided support to our committee and provided VFF documented advice of the rights of rural landowners. Our committee may argue that the companies that have been doing business in other areas of the State have acted in the best interest of both landowners and the miners, but unfortunately this has not been the experience that we've had.

Monash Energy indicated from an early stage that they would not be prepared to acquire any land from landowners in the area of the mining lease until they had reached the final investment decision stage of the project, which would determine that financial commitments for the project development would have been secured. In discussions we've had with them, basically they were needing \$6 billion of finance to actually put this together and, of course, you can understand with the global financial crisis that other investors would find better places to put their money.

Their initial timeline for this final investment decision, as communicated to us in June 2007, was late 2012. The best case scenario for Monash Energy was that they would consider purchasing properties after 2012, some 10 years after the land had been originally blighted by the exploration licence. Although our committee and representatives from Monash Energy undertook discussions to negotiate the draft principles to guide act acquisition in a spirit of respect, there were a number of issues that remained unresolved. As a result, a final set of principles were not endorsed by both the Committee or Monash Energy, or forwarded to affected landowners to use as a guide. A copy of the Monash Energy Draft principles that were developed on 30 July 2007 is in the information that has been distributed, and also a copy of the minutes of the meeting immediately after that in September 2007 of our committee was provided with documents forwarded to the Committee staff prior to the meeting. So basically this demonstrates there was still some way to go in regard to what they thought was reasonable compensation and what we thought was a reasonable compensation platform to start with.

A major concern for our committee is that representatives from Monash Energy would not acknowledge that the granting of an exploration licence and later a mining licence created a blight on the land due to the uncertainty of future development. As a result of the global financial crisis and Monash Energy's decision to shelve the proposed coal to diesel project, they decided to cease to meet with our committee.

Our committee, with no possible resolution in the foreseeable future, contacted the Victorian Mining Warden, Andrew Swindells, to inform him of our concerns. Mr Swindells attended a public meeting at the Flynn Tennis Club to listen to our concerns in November 2009, and at that meeting 31 landowners, out of the 33 covered by the mining licence, completed an application to refer a mining dispute to the Victorian Mining Wardens Court. Unfortunately, Mr Swindells was forced by the previous government to resign and replaced with a new Mining Warden, John E Butler. In December 2010, Warden Butler indicated in correspondence to all of the landowners who lodged a grievance that Warden Swindells had undertaken a test case between a landowner and Monash Coal, and following discussions between the parties the case was adjourned so the parties could have discussions regarding the company's plans in relation to the licence.

Not 1 of the 31 landowners who lodged an application to refer a mining dispute to the Victorian Mining Wardens Court has indicated to the members of our committee that they were involved in the test case. The landowners have sought support from our local member, Russell Northe, in August 2011 to make representation on behalf of our committee seeking feedback from the office of the Mining Warden, with no response received by Mr Northe from the office of the Mining Warden to date.

We've endeavored to use the system established by the State of Victoria to broker disputes involving the mining sector, and when our group enacted the appropriate processes, the opportunity to have the Mining Warden broker a resolution the support was withdrawn. Rural people like ourselves are not by nature militant and this may be seen as a soft touch. The recent actions of the Office of Victorian Mining Warden has left the landowners impacted by Monash Energy confused, downtrodden and forgotten.

I'll move onto the last point: the need to have an established, transparent and timely process for determination of levels of compensation. In the days of the State Electricity Commission of Victoria, SEC, if land area was deemed required for coal development, an Interim Development Order, an IDO, was issued over the land area required. The SEC would purchase the land on the request of the landowner within a scope of established principles. This was the approach that our committee adopted in our discussions with Monash Energy Coal Ltd.

Our committee also understands that the *Land Acquisition and Compensation Act 1986* outlines that land required by government agencies and departments, for example VicRoads, can be acquired either compulsorily or via negotiation and sets out the process to be followed and how compensation is to be paid. The Valuer General provides valuations for these acquisitions. Compensation can also be paid under provision of the *Planning and Environment Act 1987*, where loss is assessed following the sale of a property affected by an acquisition overlay.

We believe that a similar process should be incorporated into the allocation of mining leases in Victoria. The conditions related to the level of compensation in rural areas need to encompass specific considerations appropriate to the community. The loss of community amenity is rarely mentioned and cannot be understated and needs to be compensated for. Generations of relationships, goodwill and community connection cannot be transplanted and the connection to the heritage of the land and the community or the area can be lost forever and this needs to be acknowledged in compensation. Our concern is that the appropriate legislation should be enacted to ensure that the welfare and rights of current landowners are considered and protected in the process of encouraging economic development.

We suggest that there should be an obligation added to the mining act or the relevant legislation to require a company or corporation which applies to have an exploration licence upgraded to a mining licence to acquire any land in the area of mining licence, if requested by the affected landowners. We also believe that this requirement to purchase the land is based on a set of agreed principles, potentially set in legislation, that considers the impact of dislocating members of a rural community who may have had connections to the area for many generations. As indicated previously, the Monash Energy Draft Principles for Land Acquisition and also our meeting minutes following those principles have actually been forwarded to the committee staff prior to the meeting.

Jeff, do you want to actually discuss solatium as a principle?

Mr RATHJEN — I would like to bring your attention to the Department of Primary Industries Minerals Petroleum Regulation which states that solatium value of up to 10 per cent may be payable. In the early 70s, SEC paid 5.5 per cent — that's 40-odd years ago. Solatium compensation has not kept up with other industries, for example unfair dismissal claims and loss of limbs, and even Monash Energy acknowledges that 10 per cent isn't enough because they offered 15 per cent.

Mr MEALING — I'll just conclude if I can. Our committee understands that it is the role of state and federal governments to promote economic development for the prosperity of its citizens. We feel that the mining projects such as Monday Energy Coal has significant potential positive economic benefits for the State of Victoria and is also one that the State Government should look to encourage. The issue for our committee is that there needs to be appropriate checks and balances to ensure that the economic prosperity of mining is shared by all stakeholders, not just some at the expense of landowners.

We trust our representatives in Parliament to carefully consider the ramifications of legislation they develop and to amend, revoke or substitute previous legislation if it impacts negatively on the community. The five issues that we have raised in this presentation, if implemented into legislative framework, should not diminish the State's attractiveness for legitimate mining companies wishing to do business in the State of Victoria. It may remove the speculators who wish to lock up land under exploration licences with a view of on-selling for profit, having a resource to access on a rainy day and disadvantaging rural landowners in the process.

It would also ensure that landowners are treated with respect by mining companies, who would be applying for an exploration or mining licence with an understanding that they would have to adhere to regular communication processes and commit to a compensation framework that is fair to all stakeholders. The landowners of the Flynn area have been impacted by the exploration of mining licences held by APEL and Monash Energy Ltd for 10 years. To have the current mining licence expunged by the current State Government will do little for us without the legislative framework indicated above, as another licence would soon be granted to someone else and, as sure as night follows day, the disadvantage to the rural landowners of Flynn will continue. Thank you very much.

The CHAIR — Thank you.

Mr SHAW — How much do you think the values have decreased? Gordon, you were mentioning your property had decreased — or was it Kevin — when the mines were around. How much have they decreased by?

Mr GRAHAM — I think that was more Jeff.

Mrs PEULICH — I think you said 20 per cent.

Mr GRAHAM — 20 percent — if you can get a buyer.

Mr MEALING — My father-in-law and mother-in-law have sold their property. Going back say 10 or 15 years ago before this exploration licence, mining licence started in the Flynn area, any exchange or sale of properties used to always be well above rateable valuations. Basically their property sold significantly under the rateable value of the property. The loss of 20 per cent, 25 per cent, would not be over exaggerated.

Mrs PEULICH — They've got a rural farming land, have they?

Mr MEALING — Yes.

Mr FOLEY — What's the land, dairy?

Mr MEALING — It's a combination of dairy farms, beef, cattle, sheep and cropping as well so there's some cropping in the area as well. It's high productive agricultural land. We understand we sit on a significant coal resource, the issue is not that we say that the Government should not explore the possibility of developing that resource, the issue is that the current exploration and mining licence structure of the legislation that issues that does not provide a fair outcome for our landowners in the area; it's significant levels of disadvantage.

The CHAIR — Is there room for different treatment between licences to explore as opposed to licences to mine?

Mrs PEULICH — The reason being, as we heard today, 1 in 300 proceeds to mining. Obviously the vast majority don't.

Mr FOLEY — Everyone knows where the coal is in Gippsland generally. There's a broader study — we'll get some guidance here from our staff — exploration licences and the development licences as of 1 February, I'm not sure if it's the case for coal, will have an intermediary step of a retention licence, which is essentially a use it or lose it approach gradually as it comes down to deal with a lot of the issues that you've discussed. My vague recollection is that that's probably not the case with coal.

Ms SIMMONDS — I think it's all resources under the Act. Monash Energy already has a mining licence.

The CHAIR — The entire thing has a mining licence?

Ms SIMMONDS — Yes.

Mr MEALING — Absolutely; they actually moved from an exploratory licence because our understanding is that with an exploratory licence if they actually hadn't moved to any production it actually used to reduce so they didn't want it to reduce anymore because they want to maximise the coal resource so they moved to a mining licence.

Mr FOLEY — And they haven't started mining?

Mr MEALING — Haven't walked on property.

Mrs PEULICH — How long ago was that?

Mr MEALING — 2006 they moved to a mining licence. They've had it for five years.

The CHAIR — What about the exploration licence, when did they get that?

Mr MEALING — 2002. The issue is that only .33 per cent, or 1 in 300, exploration licenses are actually moving to any sort of production so then it's absolutely clear that the people who are getting issued with exploration licences either have not got the capacity to move into production or basically they're just speculating; they're locking up the land so when you get a Rio Tinto or a BHP or somebody else who has got the capacity to develop resources they can trade it on.

Mrs PEULICH — Kevin, in addition to Russell Northe whom you mentioned, given that it goes back to getting a mining licence back in 2007, have you made any other representations? Given that obviously every region has five Upper House Members of Parliament and I think there was a predecessor to Russell Northe, have you made any representation to other members of parliament?

Mr MEALING — Yes, a number of the members of the group have spoken to our other members — Peter Ryan, also federal member Darren Chester about the issues. We've actually spoken to the Minister for Agriculture and we've spoken to people from the Minister for Mining Resources.

Mrs PEULICH — When did your group form, just out of interest?

Mr MEALING — 2004.

Mrs PEULICH — So what representations since 2007 have you made or is that just recent representations?

Mr MEALING — Representations to those ministers have been this year.

Mrs PEULICH — But you made no representation for a number of those years. Any particular reason?

Mr MEALING — We went through the Mining Warden in order to basically force Monash Energy into actually enter into appropriate dialogue. We felt it was important to actually make sure that we were talking to the company and the Office of the Mining Warden, which is the legislative framework to actually bring people together if you've got disputes, that's the most appropriate way to do things, so that's what we actually did and that opportunity for us is absolutely clear in the DPI website in regard to what the role of the Mining Warden is, and that's actually to broker disputes or resolution to disputes between mining companies and landowners; it's absolutely clear, I think it's dot point three. But for us, in 31 applications everyone said: 'No can do, can't help you'. So we've got two different Mining Wardens, one saying: 'Yes, we can get together and bring Monash Energy to the table to work this issue through'. And then all of a sudden that Mining Warden is gone, the next one comes in and says: 'Sorry, can't do, can't help you'.

Mrs PEULICH — When did that change of the guard occur?

Mr MEALING — It occurred in 2010.

Mrs PEULICH — Month?

Mr FOLEY — Early.

Mr MEALING — DPI had an inquiry into the Office of the Mining Warden where we actually made representations and then it was still under Peter Batchelor's watch so I'd say that about, from memory, about July or August.

Mrs PEULICH — Did you make any representations to Peter Batchelor?

Mr MEALING — We actually went through the Mining Warden.

Mrs PEULICH — So you've made no political representations until — —

Mr MEALING — We went to our local member who actually wrote a letter to Peter Batchelor on our behalf.

Mrs PEULICH — And that was?

Mr MEALING — The local member was Russell Northe.

Mrs PEULICH — So he did write?

Mr MEALING — Yes, we've had a number of correspondences back and forward with Russell Northe. Russell Northe is the member with the biggest stake in regard to his constituency being within the area of the mining licence.

Mr FOLEY — And the issues with the council and representation of the issues through that level, has that brought you any comfort?

Mr MEALING — We haven't made any representations to the Council because the Council do not have any role with Monash Energy; all they do is have a chat to them about things.

Mrs PEULICH — But council always has an advocacy role, local government has an advocacy role. It's within its Local Government Act, just a broad advocacy role.

Mr MEALING — Our local member has a significant connection to the Latrobe City. In regard to talking about current issues that he would have, there is no doubt that Russell Northe would have spoken to Latrobe City about our issues.

Mrs PEULICH — Forgive me, I thought that in your first reference to Russell Northe you had said that he hadn't responded?

Mr MEALING — No, that's absolutely incorrect.

Mrs PEULICH — I'm glad you clarified it.

Mr FOLEY — Other than the Mining Warden, has there been any engagement with DPI staff?

Mr MEALING — Mr Foley, my understanding is that the Mining Warden operates under the governance of the DPI, so the DPI fund the money for the Office of the Mining Warden.

Mr FOLEY — Under a piece of legislation sort of separate but a part of.

Mr MEALING — Basically we've got a legislative structure where the funding of the Office of the Mining Warden comes out of the budget of DPI, so the policing of the DPI's work actually gets funded by the DPI. So if the DPI actually doesn't want people looking at what they're doing, you reduce the funding to the Mining Warden; it's easy to see.

Mr FOLEY — You think that's part of what's happened here?

Mr MEALING — I can say it in this forum but I can't say it anywhere else.

Mr FOLEY — That's why we have privilege.

Mr MEALING — Correct.

Mr FOLEY — Have you had any relationships or any engagement with the DPI staff other than the Mining Warden?

Mr MEALING — Why would we actually have conversation with the DPI staff? We've got a Mining Warden here to actually broker the disputes, we don't need to talk to DPI staff.

Mr FOLEY — I'm not trying to be cute about it — —

Mr MEALING — No, I understand where you're coming from but the fact is that this has been an extremely frustrating 10 years. As people who sit around and have a chat about how do we actually get someone to talk to to help to fix this? We are really, really grateful of the opportunity for you people to actually listen to our case because we've just been getting stonewalled everywhere and it is extremely frustrating. We've got people who want to retire and go on with their lives, they can't.

It's like you guys working your backsides off for 45 years in public office and you've got your superannuation plan — you want to retire to Phillip Island, you want to do all that sort of stuff — you lose a third or 25 per cent of your super. Can't give anything away to your kids, it can't happen. This is what's happened to us because someone in the DPI has signed a piece of paper and given somebody an exploratory licence and then they've moved it to a mining licence and 31 families in a community affected. The only people who can fix it is you guys, you've got to change the legislation; that's the only way it can be fixed.

For instance, if the Minister for Mining and Resources decides to expunge the Monash Energy Coal licence tomorrow, they'll be queuing up; they know it's there, there is a significant coal resource. We're not saying, again, that it shouldn't be developed but it's got to be developed in a fair manner because it's just going to go on for another 50 years. We're not going to be around 50 years.

Mr RATHJEN — Perhaps with another stroke of the pen it could be another 50 years.

Mr MEALING — That's the level of frustration. I understand what you're saying have you talked to DPI. Well, why we would bother?

Mrs PEULICH — So they've granted the mining licence, they haven't begun mining. Is there an agreement?

Mr MEALING — Of what?

Mrs PEULICH — Between those who have taken up the licence and landowners?

Mr MEALING — No.

Mr FOLEY — It's draft principles.

Mr MEALING — Draft principles is the only thing we discussed. Sat in our lounge room, sat down with representatives from Monash Energy — Geoff Cochrane was the CEO at the time, sat down with him and a couple of his accountants, sat and talked through principles. He went away and drafted up that document, didn't include everything that we actually would have liked, and that's part of negotiations, we understand that. That was in July. In September we had a look at what they put together, got feedback from our members, and we actually looked through and said they haven't put any of these other things. The minutes of that meeting is in the stuff that we've provided, to show the differences, but that's where we're at. There's been no agreements, there's been no options, there's been no nothing. And it doesn't have to be, that's the problem, they can just sit on this. Monash Energy is owned by Anglo American and also Shell. If they decide it's all too hard, global financial crisis means they want to go and spend their money somewhere else, they can sell that, they can hang onto it until year 2030 and then sell it for how many hundred millions to BHP, and then they might start. But the whole thing is that we've got no way of knowing what's going to happen.

The CHAIR — Is 50 years an extraordinarily long time?

Mr RATHJEN — The Mining Warden thought it was, yes.

The CHAIR — Do we have an indication of why that happened?

Mr RATHJEN — No.

Mr MEALING — They didn't give us any indication but I would imagine that if we go back to late 1990s, early 2000s, we've just had a decommissioning of the State Electricity Commission, SEC, significant job losses in the Latrobe Valley. We've had a real community downsizing and a lot of unemployment. I would imagine that at that particular stage the Government was keen to make sure that they got a company in here to actually reinvigorate the Valley and get some significant infrastructure happening. The publicity at the time was that this would produce significant employment, especially in the initial stages.

The CHAIR — The granting of a 50 year licence, is that within the legislation, or was it within the legislation?

Ms SIMMONDS — I actually don't know.

Mrs PEULICH — If it wasn't a coal mining licence do you think that the situation would be at a standstill given the sort of broader legislative uncertainty and all the political discourse about whether we're going to have a carbon tax or weren't going to have carbon tax or an ETS and so on? If it was any other mining apart from coal, would the Flynn Creek group be facing a standstill for five years?

Mr MEALING — I don't think it matters. I think the issue with this particular development was that they really focused on the geosequestration, the carbon capture and storage focus, so whether it was actually going to be coal or whether it was going to be something else, I don't know whether that would have made a difference because the discussion that we had was that the nature of the resource was going to be carbon neutral because they were actually going to store it.

The CHAIR — That's what they were claiming, was it?

Mr MEALING — Absolutely. And significant presentations to our committee. They were actually going to look at carbon capture and storage in the underground areas where they've been pulling the oil out of Bass Strait for many, many years.

The CHAIR — Any further questions?

Mrs PEULICH — So what would be justice for you, what would be a just outcome for you?

Mr MEALING — Addressing the five points in here in legislation. Making those changes would ensure that the landowners of any particular area, whether it be western districts, whether it be East Gippsland or whatever, is that their rights would actually be included in legislation and would also ensure from a state's perspective that vast areas where there is exploration or mining licences weren't locked up for a rainy day, they're actually getting utilised by the State for production and at the moment it's not happening.

Mrs PEULICH — Of course, security finance is often a bit of a lengthy process. I've got a little project in my neighbourhood — it's got nothing to do with mining — they've had to go to the drawing board because the finance is no longer available, it needs to be revisited. Sometimes, unfortunately, those things can't necessarily be as smooth flowing as possible but I think your points are noted.

Mr MEALING — The other thing is to get a mining licence of over 1000 hectares, \$6600. Going through the information on the DPI website indicates that in the application process — maybe I haven't read it correctly — but the application process says that they have to show what sort of financial responsibility or what capacity they've got to develop that going forward. They have to show that they can commit, at least in year one, \$15,000 into the area of exploration. They've indicated also that the person's wage who is taking out the licence can cover between \$15,000 and \$25,000. So they don't actually have to do anything, they don't even have to have any capacity. So you're giving people mining licences who don't demonstrate that they've got the capacity.

The CHAIR — As far as the Inquiry is concerned there's obviously a range of things, and part of that is about the fine balance between the rights of the landowners, the best use of the land, and mining. Just for your interest sake, you've already indicated you've read some of the submissions anyway, but Victoria is running pretty well at the back of the field in attracting mining here anyway. I understand what you're saying as far as attracting mining it's attracting people that hold mining licences that don't actually mine, so that's an issue. I would probably not want to raise your hopes as far as any retrospectivity is concerned for legislation removing somebody's licence that already exists. I think that that would be pretty unlikely, to be honest. However, the reason I asked that question before was is it within power to have granted a 50 year licence? I don't know. Was it done in the right circumstances?

Mr FOLEY — I'm sure it was.

The CHAIR — Without any conditions for — —

Mr FOLEY — I'm sure there are conditions.

The CHAIR — My understanding now there are preconditions and then there are tick-offs as you go through. We would need to have a look at that licence and see what the makeup of it is and that would be the best opportunity to have some relief there rather than relying on a committee to recommend legislation that was retrospectively removing licences, I think that would be a significant thing for the Committee to take on.

Mr MEALING — I can understand that, Mr Chairman, but the thing is if we can use this as a learning process to say that going forward it's not just an outcome of this committee; it's all over Victoria for explorations licences everywhere. The same thing is going to happen and continue to happen unless something is done about it. We have to continue to look at other forums other than this particular committee to look at addressing the issue of the current mining licence that governs our particular locality and we just wanted to make sure that you guys understand what the issues are.

The CHAIR — We have certainly heard you.

Mr MEALING — And then potentially look at going forward and how the State can maximise their resources.

The CHAIR — I think I can speak on behalf of the Committee, we're a little bit gobsmacked at that. Nobody finds that at all attractive, or that that should be the case but, again, addressing that is something that we have got to consider how we go about addressing that prospectively as well, which is going to be our major focus. Thank you very much for your evidence today. The evidence that you have given will become public record. You will be sent a transcript of today's proceedings and we invite you to make any grammatical changes that you think are required but nothing to the substance of the document. Thank you very much, we really appreciate your time.

Mr MEALING — Thank you.

Mr GRAHAM — Thank you.

Mr RATHJEN — Thank you.

Witnesses withdrew.