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SUBMISSION OF HANSON CONSTRUCTION MATERIALS TO MINING ACT 1971 & MINING REGULATIONS 2011 DISCUSSION PAPER DECEMBER 2016

HANSON

Hanson Construction Materials is a part of the Heidelberg Cement Group based in Germany. Heidelberg Cement is one of the largest building materials companies, the largest aggregates producer, the second largest cement producer and the third largest ready mixed concrete provider in the world. The Heidelberg Cement group employs around 62,000 persons at more than 3,000 production sites in 60 countries on 5 continents.

The Hanson Construction Materials business in Australia was acquired by Heidelberg Cement in August 2007 to enable them to gain a significant market position in Australia, particularly in the ready mixed concrete and aggregate sectors.

In South Australia, Hanson conducts six quarry operations, five located near greater metropolitan Adelaide and one on Yorke Peninsula. Three of the operations are hard rock quarries and three are sand quarry operations. The quarries have estimated reserves of 10 to 60 plus years.

Within these operations there are nine private mines (comprising 437 hectares) and five EMLs (comprising 159 hectares). Another operation is conducted by lease of another private mine and an EML (comprising 89 hectares).

Hanson has approximately 70 employees in South Australia with up to 20 contractors working on quarry sites.

The Hanson operation in South Australia is that of an integrated construction materials business with cement, concrete and logistics business divisions. With the backing of Heidelberg Cement as a global leader in aggregates and construction materials, Hanson has been acquiring businesses and sites which have enabled it to enlarge its footprint in South Australia. It has done so within the existing legal and regulatory context having regard to the certainty of outcome that the existing Mining Act and Regulations in South Australia provide. Each of the Hanson sites have been subject to recent or current regulatory, mine planning and licensing review driven by operational requirements, expansion planning, community interest and routine review. This is a deliberate part of the Hanson strategy to enable synergies across their operations and to drive a high level of detail, process and scrutiny towards sustainable best practice and innovative solutions.

To maintain ongoing investment in operational aspects and the management of Hanson's operations, there must be a balance of economic, environmental and social factors and a highly stable and supportive regulatory environment. All of these issues can be significantly affected or altered through change in regulation and it would be a matter of material concern to Hanson if this process of review led to outcomes that had the effect of diminishing the overall value of their interests in South Australia. On the other hand, positive and facilitative outcomes from the review process will encourage Hanson to continue its objectives in this State and encourage further investment and support through the Heidelberg Cement group.

HANSON SUBMISSIONS

General

Hanson has considered the terms of the "Leading Practice Mining Acts Review Discussion Paper". A good deal of that paper relates to issues that are primarily of concern to the mining industry more generally and have little or no impact on the purely extractive industry operations Hanson conducts and foresees conducting in South Australia.

On many matters, there is a distinct separation between the operations of extractive industry companies which are at the leading edge of the construction industry and those of the explorers and miners to which the Act otherwise applies. This is recognised in other jurisdictions such as WA and NSW where regulation of extractive operations sits largely outside of the State Mining Acts. To that extent, much of the material in the discussion paper is not commented upon but the fundamental point Hanson seeks to make in this submission is that it has owned and acquired private mines and tenements in this State that are on considered and understood terms. They derive their value from that certainty. It is not appropriate for the Mining Acts Review to introduce concepts and processes that would have the effect of undermining or diminishing the status of the Hanson holdings.

Specific Comments

CHAPTER 1 : EXPLORATION, MINING, QUARRYING, COMMUNITY AND LAND ACCESS

A series of issues are raised in this chapter, some of which have limited application to the extractive industry operations of the kind Hanson are engaged in.

The following general comments are made :

- In relation to the provision of information to be accessible by third parties, whether that be generally through the Department or by way of specific disclosure required in respect of land access issues, Hanson is of the opinion only final concluded applications or determined positions should be disclosed. If other material that passes between the Department and operator is to be made publicly available, such material could be misconstrued or not provide an accurate overall position.

- An issue is raised about what is appropriate "personal use" for extractive materials. To ensure a level playing field, Hanson considers no unregulated personal use of extractive materials should be made where that use is for, or ultimately serves, any commercial or industrial purpose.

- Hanson has no issue with the concept of "exempt land" provisions in the Act, but considers the opportunities for review in that context should remain as they are. The nature of the exempt land provisions are such that, as presently constituted, a person

cannot conduct mining operations on exempt land unless it has been able to negotiate a waiver or had one determined by court process. Accordingly, the land owner is presently protected from any such operations and there should be no need for the land owner to institute court proceedings in relation to a proposal. The onus is on the operator to be able to justify a proposal. If the operator cannot do so either by agreement or through the court, the exempt land status stands and the owner is protected.

- In relation to "fast and fair court processes and access to justice", Hanson considers there should be one Court available at first instance to meet the needs of the Act. That could be either the Warden's Court or the Environment Resources and Development Court where persons of appropriate experience, including industry experience, are available to deal with those matters. The Supreme Court should only be available as a court of appeal in appropriate circumstances.

- In relation to land owners being notified of changes to approved mining operations, Hanson is of the opinion that only changes that are significant in their impact and degree need to be notified. There are many other occasions on which changes might be made which are immaterial to third parties. There needs to be clarity around the point at which notification is required. Again, only final, completed documents relating to that change should be notified.

CHAPTER 2 : SUSTAINABLE FUTURES

2.1.1 The Scope of Preventative Measures

Where good reason exists, the Minister should be able to condition a PEPR so that a miner cannot commence activity until a particular point in time, but not impose a condition relating to compliance with some past or unrelated act or activity not specifically addressed in the PEPR. The PEPR needs to be a complete document capable of commencement without uncertainties arising from other acts or issues.

It seems reasonable to Hanson that the expiry of a tenement might be prohibited or delayed until an operator has complied with all outstanding obligations under the PEPR, unless alternate arrangements have been entered into. However, matters that are not related to the expiry of the tenement as addressed in the PEPR should not be used in this way. A streamlined surrender and/or expiry process is desirable but needs to be well defined in the Act and Regulations. It is not appropriate for public engagement to be undertaken prior to surrender or expiry as all of the outcomes anticipated as leading to surrender/expiry should have been articulated in the conditions of the tenement itself or in the PEPR or other operational document applicable to the site. Other unexpected matters should not be introduced at that time.

2.1.2 The Scope of Compulsive Tools

Hanson does not oppose the use of enhanced compulsive tools provided they are reasonable in their approach and applied reasonably. Personal liability for directors in a context where activities under mining tenements are subject to security in one form or another does not appear necessary or appropriate.

2.2 Ensuring greater government and industry environmental accountability and transparency

Hanson accepts that online access to relevant documents is appropriate, but again submits the documents made available should be final concluded documentation such as leases, licences and other tenements, PEPRs and MOPs to the extent they have been approved (subject to any reservation of commercially confidential material).

2.3 Enforcing leading practice mine closure planning, and progressive rehabilitation to achieve sustainable mine completion outcomes

As indicated above, Hanson does not oppose compulsive tools (apart from personal liability for directors) to achieve compliance with tenement conditions, PEPRs and MOPs where concluded positions have been arrived at. Leading practice mine closure and progressive rehabilitation should be a part of that process and addressed by conditions, PEPRs and MOPs in a conclusive and transparent way.

Financial assurance can presently be sought by way of bonds, or for extractive operations, the Extractive Areas Rehabilitation Fund. It is not considered these provisions need material change but they should be alternative processes and resort should not be made, for example, to bonds, when the EARF already provides for the same matters.

Companies with leading practice mine closure and progressive rehabilitation behaviour should be rewarded and in such cases acknowledging and allowing reliance upon detailed corporately imposed internal standards might be acknowledged in lieu of the extensive expression of such matters in documents such as PEPRs and MOPs.

It is acknowledged that steps should be taken to ensure administrators and liquidators are unable to disown mining tenements in circumstances where it would be unsafe to do so or would result in environmental harm or other loss. Those obligations should remain in force and be accounted for in the administration or liquidation of the company or the adoption or dispersal of its assets to others.

2.4 A modern leading practice financial assurance model and the rehabilitation of former mine sites

Hanson is generally of the view that the Extractive Areas Rehabilitation Fund already provided for under the Act provides an appropriate financial assurance for the levels of risk likely to arise from extractive operations. It is a flexible fund which, subject to review at regular intervals, appears to have the funds and the capacity to manage legacy sites and company failures. A hybrid position of both bonds and a levy to a pooled fund is not supported as it creates duplication and is unnecessary when a fund such as the EARF is in place.

Current procedures for accessing the EARF are outmoded and obstructive of its true purpose and need to be revised. There needs to be clarity about the circumstances in which the EARF can be resorted to.

2.5 The regulation of private mines

A private mine is a very specific and valuable concept under the Mining Act which reflects the historical status of the land in question and the mining operations that can occur upon it.

Hanson has built its business on a basis that includes established private mines which it has held and other private mines which it has acquired. Hanson currently holds and operates 10 private mines representing nearly two thirds of its portfolio in South Australia.

It is noted that the Discussion Paper recites that the concept of a private mine is not to be interfered with, but otherwise, suggests that the regulation of private mines should be aligned with those of EMLs. This is not supported as the whole basis of the private mine is that it has distinct origins and opportunities from its historical status which is wholly defined in the Mining Act itself. To move the opportunities that arise from a private mine to reflect those of an EML destroys the concept of the private mine itself. Hanson is strongly opposed to any proposal to diminish the rights that accrue to a private mine.

Hanson accepts that the process of revoking inactive private mines might be streamlined, but adequate safeguards need to be maintained to ensure revocation does not occur in circumstances where those entitled to the private mine or the owner of the land in question are not directly and individually consulted.

2.6 The Extractive Areas Rehabilitation Fund

As indicated above, Hanson supports the EARF concept as already established under the Act provided it is properly regulated and made available for appropriate rehabilitation activities.

2.7 Transfer of Ownership and Responsibility for Mine Infrastructure, Productive Assets and Mining Land Forms to Third Parties

While this is not perceived as a significant issue for extractive operations which tend to be of great length and to have limited useful permanent infrastructure at the end of the mining activity, it is noted that the higher the degree of regulation applied, the less opportunity there is for innovative solutions to maximise the post surrender benefit of such infrastructure.

CHAPTER 3 : THE BENEFITS OF A STREAMLINED, RIGOROUS AND COMPETITIVE REGULATORY ENVIRONMENT

By way of general comment in relation to this Chapter, Hanson is of the view that the application of digital methods and online access to the Department's regulatory services are entirely appropriate.

Hanson would not oppose a move to a graticular block system for mapping under the Act which is utilised in other jurisdictions.

Hanson has already commented on the circumstances in which information should be made publicly available and the restrictions that should be placed on disclosure.

It is vitally important that the Department improves and streamlines the assessment processes applicable to PEPRs, MOPs and similar documents. These should not be the subject of laborious drafts and redrafts over long periods of time. Early engagement on all issues that are material should be undertaken and issues that are not material should not be debated.

In relation to some of the specific issues arising in relation to tenement forms, Hanson is of the opinion the concept of the Mineral Claim could be replaced by a more direct route to a mining lease, or if mineral claims are to be maintained, they should be transferable.

In relation to the concept of a more flexible "generic" mineral lease, Hanson does not oppose such concepts provided they are appropriately addressed and do not lead to a "grab" for minerals of a kind which an operator has no real intent to extract. It is noted there are current provisions in the Act relating to the ability to manage overlapping tenements and it is not identified that they are necessarily deficient. Hanson has a large exploration licence overlying one of its primary mining operations and no material issue has arisen at this time. However, appropriate mechanisms for the fair and appropriate resolution of any issues arising between parties with overlapping claims must be put in place.

While Hanson does not currently hold a miscellaneous purposes licence, it can see the value in a form of tenement that attracts less rigorous regulatory requirements where it is utilised, not for actual mining, but for purposes ancillary to mining operations.

In relation to extractive operations, Hanson does not support a "use it or lose it" approach to tenements. Extractive operations typically have very long life spans and companies plan to hold land in reserve to serve the needs of future demand. This is entirely appropriate and should not be hindered by a desire to "turnover" land as might arise with exploration and metallic or other forms of mineral operations.

Hanson supports the grant of mining tenements for a project's mine life. This is particularly appropriate for the long term and relatively low impact of extractive operations.

Hanson does not support any change to the royalty provisions currently applicable to extractive operations. They provide certainty and a level playing field. The use of contract prices and the like to assess royalties is not appropriate in this context.

CONCLUSION

The Discussion Paper raises many issues and addresses many matters arising under the Act in a general way. Hanson notes again that it has built up its assets in South Australia on the basis of the present regulatory position and it is opposed to any fundamental change to the Act which would diminish that position or impose requirements which have not applied to date. In particular, it has acquired private mines for what they are under the present Mining Act and any attempt to diminish those would be strongly opposed.

It is critical the State of South Australia maintains and uses to its advantage the fact that large reserves of high quality extractive materials are located so close to the markets they serve. This is a unique position not enjoyed by most of Australia's capital cities and creates an economic advantage that must be maintained. The Department, in all its dealings under the Act, needs to be flexible and move quickly in the delivery of its regulatory role. By so doing, "leading practice" in Australia can be achieved.

Hanson reserves the right to comment whenever any further opportunity is given and, in particular, at the time when actual amendments to the Act are proposed and the form and the content and implications of those amendments can be assessed.