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SUBMISSION OF BORAL RESOURCES (SA) LIMITED

TO LEADING PRACTICE MINING ACTS REVIEW

MINING ACT 1971 AND MINING REGULATIONS 2011

DISCUSSION PAPER DECEMBER 2016

1. INTRODUCTION

1.1 Boral

Boral Resources (SA) Limited (Boral) is a wholly owned subsidiary of Boral Limited an Australian top 100 public company with a market capitalisation of approximately $6.7bn headquartered in Sydney, New South Wales.

Boral is a market leading company originating in Australia and operating in Australia, the United States and Asia as a diversified supplier of raw materials such as aggregates, sands, concrete, asphalt and related products as well as a wide range of building materials and supplies. Boral supplies its products and materials to the residential, commercial, construction, civil works, roads and engineering markets.

Boral operates 100 quarries across Australia including key quarries in South Australia.

In South Australia, Boral's principal businesses are the extraction and supply of aggregates for the building and civil construction industries and the production of related products such as concrete, asphalt and road base.

1.2 Boral History in South Australia

In South Australia, Boral can trace its origins to companies and businesses that were at the forefront of extractive operations in this State since the 19th Century. For many years, the company has held and operated the principal quarries producing extractive materials in this State and has held and is expected to continue to hold a market leading position.

1.3 Boral Employees / Contractors

Boral employs some 7,000 people nationally. In South Australia it employs 340 people and has approximately 150 contractors working in the transporting, laying and installation of its products. Many more persons employed in South Australia depend directly on Boral for the provision of services such as the supply, maintenance and repair of fixed and mobile machinery, vehicle fleets, plant, equipment and the like.

1.4 Boral In the Market Place

Boral operates 11 quarries in South Australia and accounts for the extraction of approximately 2-3 million tonnes of aggregates annually.

Boral aggregates, either directly or as concrete, asphalt and related products, can be found in one form or another in almost all commercial and industrial buildings, houses, highways, roads and footpaths, including the State's major infrastructure such as hospitals and schools and civil projects of all kinds such as expressways, major arterial and sub-arterial roads, drainage works, foreshore construction and improvements and many other areas.

By way of example:

- A typical city office building constructed of reinforced concrete might contain approximately 1000 tonnes of aggregates per floor in its construction.
- A kilometre of standard 2 lane highway would contain approximately 400 truck loads of aggregates (in excess of 10,000 tonnes) in its construction not including asphalt and concrete in its kerbing, overpasses, bridges and other necessary forms.
- An average new home requires approximately 110 tonnes of aggregates together with approximately 53m^3 of concrete.

1.5 Boral's Strategic Locations

One of the keys to the success of Boral in the South Australian market place has been its ability to continuously deliver aggregates from quarries of very long lifespan which ring metropolitan Adelaide or are in proximity to large regional centres. In respect of the Adelaide metropolitan market, Boral has quarries located at Salisbury, Para Hills, Lobethal, Stonyfell, Brighton and Reynella which allow it to extract and deliver at minimal cost the aggregates it produces. This is commented upon below, but provides a unique strategic advantage to Adelaide which is unknown in other metropolitan capital cities in Australia.

In the country regions, Boral has quarries located at Whyalla, Stirling North, Kapunda, Murray Bridge and Mt McIntyre.

1.6 Boral Property Holdings

Boral owns or is responsible for properties of an area of approximately 2700 hectares in South Australia. Government taxes and charges (excluding royalties or other payments under the Mining legislation) and local government rates and charges amount to in excess of $1m annually. Other payments are made into industry related

occupational health and safety funds and are applied to the extractive areas rehabilitation fund that benefit the State as a whole.

1.7 Boral Projects

Some of the major projects Boral has been a material contractor to in this State in recent years include:

- Torrens to Torrens road project.
- Royal Adelaide Hospital.
- Southern Expressway duplication project.
- Adelaide Oval redevelopment.
- Adelaide Airport runway and apron extension projects.
- Desalination plant.
- Seacliff rail project.
- Sturt Highway redevelopment

It is critical to note that of material sold and supplied by Boral in South Australia, approximately 40% goes to government agencies and local government with the balance to the private construction industry.

If any review of the Mining Acts and Regulations results in additional financial impositions on Boral (or any other operator in the extractive industry), those costs will immediately be passed on to customers in this State and the brunt of them will be borne by government and local government in a manner that would be economically counter-productive.

1.8 Boral Private Mines and Tenements

Boral has been a very long term holder and operator of private mines and extractive mining leases granted under the Mining Act. It currently holds or operates 14 private mines and 17 extractive mining leases and a miscellaneous purposes licence.

While Boral holds the majority of these private mines and tenements, some are held by individuals, private companies and local government authorities where Boral has operational agreements and rights enabling it to direct and control operations at those sites.

Details of those holdings are:

Private Mines

1, 2, 3, 4, 6, 7, 22, 48, 87, 107, 154, 174, 222 and 227.

Extractive Minerals Leases

3243, 4603, 4778, 4779, 4780, 4781, 5114, 5149, 5556, 5589, 5730, 5731, 5732, 5770, 5939 and 6319

Miscellaneous Purposes Licence

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It is important to note that while the numbers of private mines and extractive minerals leases held or operated are similar, private mines account for approximately 90% of Boral's holdings by area. Boral has a very strong interest in the retention and maintenance of the private mine.

1.9 SA Market Conditions

The market place for extractive and construction materials in South Australia is very tight. Unlike the eastern states and until recently, WA, South Australia has not enjoyed "boom" times in the construction and related industries and building and civil construction, where occurring, attracts highly competitive pricing from an industry that runs on a very "lean" basis.

Until recent years, most of the major Australian suppliers of construction materials operated from this State with a significant administrative and management presence. In recent years, however, many of those structures have been rationalised and reduced so that operations are administered and directed through larger centres or head offices located in the eastern capital cities and in Perth. This has had a negative effect on employment and other "add-ons" that arise from such State presences. It is critical that as much of the management and operations of such companies remains in South Australia to avoid SA being seen as a "back water" in the industry generally. This can only be achieved by maintaining a robust and growing economy in this State where demand for industrial, commercial and housing development and infrastructure increases and jobs and profitable businesses are maintained.

In such a context, from an extractive and construction perspective, the most critical factor is to keep the cost base of materials as low as possible.

1.10 SA Market Advantages

Due to the proximity of South Australia's quarrying sites to their market place and the leanness and efficiency with which materials can be extracted and delivered, the cost of a tonne of aggregates delivered into the CBD in Adelaide compared to other capital cities is very low. The fact Adelaide has such a competitive advantage is primarily driven by the proximity of supply to market (and hence materially lower transport costs in delivering aggregate products). For example, Adelaide has major quarries located within 10-20 kilometres from the CBD. In Sydney, aggregates are being supplied from 100 to 200 kilometres away by rail transport. This is coupled in South Australia with leaner operations and lower wages and contractor costs and expectations than can be found in the eastern States.

However, the competitiveness that has driven the SA market place means that any cost increase in wages, fuel and regulatory requirements imposed by the Mining Act and related legislation, cannot be absorbed and must be passed on directly to customers. As the majority of customers in this State are government or local government, any cost over which the State Government has control, must be kept to an absolutely minimum to maintain the competitiveness South Australia currently enjoys. Any increase in those discretionary costs will be an immediate detriment to

that competitiveness and a burden passed directly to all consumers, particularly those relying on government infrastructure and services.

Further, if actions such as this review of the Mining Act and regulations result in increased costs to extractive companies by way of land access requirements, tenement application processes, lease and licence conditions, mining plan requirements and environmental and related obligations, all of those matters will also strike at the economic competitiveness of South Australia and its ability to maintain the edge it currently holds.

1.11 Mining Legislation

Another factor to be borne in mind is that extractive operations do not always sit easily with the focus and direction of the Mining Act and regulations which better serve those typically looking to extract metallic, industrial or other forms of minerals.

In a number of Australian States, extractive operations are not specifically dealt with by Mining Acts.

For example, in Western Australia, Queensland and New South Wales extractive operations are largely regulated under planning legislation reflecting the operational differences that are seen from metallic and other minerals.

Boral is of the view that whether dealt with in legislation and regulation together or separately, it is critical the provisions applicable to extractive operations directly reflect the differences between those operations and those for metallic and other minerals.

1.12 Private Mines

The private mine is a concept unique to South Australia and carries with it material and significant differences in regulation from the mining tenement systems used under the Act. In particular, the Mining Act and Regulations do not have any application to private mines unless specifically expressed to do so and the Development Act does not apply.

The concept of the private mine is discussed in the Review Paper and further below, but essentially it represents a statutory right of a proprietary nature granted when the Mining Act was introduced in 1971 to persons who owned the minerals that were contained in their land, giving them the ability to extract those minerals largely without impediment and to the boundaries of their land. The Mining Act 1971 expropriated those minerals to the State but in so doing, provided as compensation to such land holders the opportunity to apply for a private mine and so retain the right to the resources on their land and continue to operate within a much less restrictive and demanding legislative regime.

The benefits attached to, and the nature of, a private mine continue to be recognised today and it is critical those benefits and that value are not eroded by increasing regulatory demands.

In particular, it needs to be recognised that the private mine is a statutory concept comprising a set of rights and opportunities. The value of a private mine lies in the distinct and beneficial regulatory regime that attaches to it without the impediment of other parts of the Mining Act and other legislation.

It is noted that the review paper asserts:

> *"The Department has no intention to change the underlying nature of private mines as part of this current Review".*

However it must be noted as indicated above, the Mining Act regime attracted by a private mine defines its existence and its value. Any attempt to regulate a private mine (for instance) in essentially the same manner as an extractive minerals lease under the Mining Act, denies the existence of the private mine and will have the result of government again effectively appropriating those rights and the value that exists in a private mine.

As noted above, 90% of Boral's holdings by area are located on private mines.

Boral, and very likely others who hold material interests in private mines, place great value on the private mine and the rights that accrue to it. They could not allow a process that would have the effect of denying the private mine to occur without challenge.

2. COMMENTS ON DISCUSSION PAPER

For ease of specific comment, Boral has taken extracts of the matters on which comment is invited in the paper and comments as follows. It should be noted that in numbers of areas (as indicated above) the provisions are really only of material interest to those exploring for and looking to mine metallic and other minerals and have limited or no application to Boral's interests. Matters raised in the paper on which Boral has no current comment, are not included.

However, Boral notes that the Review Paper is, in many respects, too broadly based to enable specific comments to be made. Boral reserves its rights to make comments on any aspect of the Review when more definitive positions are published, and in particular, at the stage of a draft Bill for amendment of the Act, when the actual impact of any proposed change can be seen.

Boral's specific comments are as follows (the numbering in the Discussion Paper is followed).

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

1.1 Using simple, accurate terms and language in the Mining Act so it makes sense to everyone

Boral has not identified any particular terms in the Mining Act it considers need clarifying. Most are well understood in their current form.

Appropriate personal use of extractive materials is anything that is not directly or indirectly part of or contributing to a commercial or an industrial use. All non-personal uses should be captured by the Act.

1.2 Ensuring you have the information you need at the right time, and that our technical assessment processes are transparent

As a general rule, Boral is of the view that open access should be restricted to material that is the product of a final, concluded position between the Department and

the operator. For example, making available the final form of a granted lease including its terms and conditions is appropriate, but not the detail of the drafts and communications (except to the extent the Act requires specific consultation and disclosure).

Similarly, a Program for Environment Protection and Rehabilitation (PEPR) typically goes through a series of drafts between the Department and the operator but only the final agreed PEPR should be made available, not the details of the process by which it was arrived at.

The present restriction on disclosure of material other than the objectives and criteria of a Mine Operations Plan (MOP) on a private mine should be maintained as set out in section 73G(8) of the Act to reflect the different and private status of a private mine as opposed to the public nature of a mining tenement.

Boral is also strongly opposed to any release of details of the extractive reserves available within any operation. This material is of high commercial confidence and underpins any extractive business. There is no need for any such information to be provided beyond what is necessary for the Department's needs. Boral accepts different rules about the provision of geological information may apply to other minerals, but disclosure is not appropriate in the extractive context where there is no relevant need for others to know.

1.3 Making sure everyone understands land access processes and expectations

Boral is of the opinion the exempt land definitions in the Act are too arbitrary and should be assessed not by distance, but by regard to the relevant land forms and the detail of the activity to be carried on, in particular, its real potential to impact on adjacent land owners. For example, non-intrusive activity at a quarry may be visually concealed from neighbours and have no other impact on them. Such activity should not be precluded by arbitrary distance requirements. A tailored, case by case, approach is required.

Boral notes the comments about access to fast and fair court processes. Boral is of the view there should be a court at first instance (whether the Wardens Court or the Environment Resources and Development Court) presided over by persons with detailed understanding and experience in the mining industry who will have the appropriate practical understanding of the concepts and issues before them. From there, normal appeal rights should be available to a higher court but only on matters of law or where it is apparent the hearing at first instance has failed to have regard to relevant matters that were put to it. A higher court should not conduct a complete rehearing of a matter where the lower court had appropriate information, knowledge and experience to make proper judgments on practical matters. Boral do not support the ability to initiate proceedings in the Supreme Court.

1.4 Ensuring that payments and fees are recovered

Boral currently has no comment on these matters.

1.5 Ensuring that the community is informed of any changes

Boral is of the opinion changes to approved mining operations should only give rise to a statutory right for a landowner to be notified or consulted where the change is of an

objectively determined serious or material nature that has the capacity to impact upon another landowner in a material way.

The approach should be a flexible and tailored one where the capacity for material impact can be assessed and agreed between the Department and the Operator, not driven by prescriptive provisions in the Act or Regulations. Similarly, any community engagement that is objectively necessary, should be determined by and confined to matters arising from the specific nature of what is to occur.

CHAPTER 2: SUSTAINABLE FUTURES

2.1 Protecting South Australia's environment for the future

The scope of preventative measures and the use of compulsive tools should be restricted to matters where there is demonstrated wilful and persistent non-compliance in the face of objectively reasonable demands and in circumstances where material outcomes may arise. Trivial matters should not attract such measures and the Department should always pursue (as it currently appears to do) consultative approaches and agreed remedies before any action is taken (except in the case of imminent emergency).

Boral is generally of the view that the current provisions relating to PEPRs (and MOPs) are appropriate if implemented in a reasonable way. The difficulties Boral (and others) experience in relation to the negotiation and conclusion of the terms of PEPRs and MOPs are not so much to do with the words of the Act and Regulations, but the way in which they are administered. The submission of operator drafts, departmental responses, resubmission of drafts and further responses results in an unacceptably long timeframe for these documents to be resolved and unacceptable costs in their preparation. For example, Boral was recently given a fee estimate of $250,000for the preparation of a PEPR to extend an existing quarry. This is a significant cost for extractive industry operations to address regulatory requirements which are not complex and involve known risks and outcomes. Increasing the cost to operate, increases the cost of materials to the end user in construction and buildings.

The "red tape" in this process should be cut away and a streamlined means of achieving an outcome arrived at. A higher level of acceptance should be placed on the technical and practical knowledge of the highly trained and experienced personnel employed by larger operators and those that advise them.

In terms of the Minister conditioning the commencement of a PEPR, such matters ought properly be addressed during the assessment process so that once approved, a PEPR comes into effect. It should not be delayed by other non-compliances (for which other remedies are available) unless they go to the core of the ability to implement the PEPR in question.

In relation to surrender or expiry, Boral is of the opinion that once the requirements of lease conditions or a PEPR have been met, lease surrender should be available or expiry occur. It is not appropriate at that time to impose a further regime that delays that process, in particular, involving community engagement. By that stage, the mining operation has gone through the stringent processes of approval and implementation. Closure should be a formality if those matters have been properly undertaken. In particular, the views of third parties who have interests other than in the safe and stable closure of a mining operation should not be had regard to in respect of tenement surrender or expiry.

Personal liability for directors is opposed by Boral. Unlike other legislation where personal liability features as a remedial tool, the Mining Act contains adequate measures in the form of security by way of bonding or resort to the Extractive Areas Rehabilitation Fund (EARF) which should be applied to costs necessary to deal with otherwise irrecoverable losses. Matters of major public interest such as occupational health and safety outcomes and significant environmental events are dealt with by other legislation.

Boral considers the current provisions for achieving compliance are adequate.

2.2 Ensuring greater government and industry environmental accountability and transparency

The proposal to "expand the Mining Register to include an array of documents which demonstrate compliance with the Mining Act and Regulations" is not supported. The Mining Register should be restricted to containing the essential details of tenements or private mines under the Act and interests in or claimed in them.

Compliance details might be obtainable by other means, but their inclusion on the public register is not appropriate. In any event, the only compliance details that should be publicly available are those which have not been resolved by appropriate action within appropriate timeframes or those which, if disputed, have been found in favour of the Department. Claims of non-compliance by the Department or third party should not be available as they may be found to have been wrong or not based on fact.

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

Boral refers to its comments elsewhere in this submission.

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

Boral considers the current tools contained in the Act are sufficient to ensure appropriate mine closure and progressive rehabilitation. Rehabilitation at first instance should be the product of appropriately worded and enforced PEPRs and MOPs with security (where necessary) by way of bonds or resort to the EARF (in appropriate circumstances) providing the necessary back stop.

The current provisions of the Act, properly applied, are adequate and sufficiently flexible to deal with these issues.

The "hybrid" system contemplated where both bonds and pooled funds might be used is unnecessary and not commercially sustainable.

2.5 The regulation of private mines

As indicated in the opening comments to this submission, the private mine must be maintained substantially in its present form. It is a long term statutory right of a proprietary nature granted to those who previously held the ownership of minerals in their land. It is defined by the statutory rights and opportunities that flow from it and any attempt to diminish or modify those rights and opportunities will be strongly opposed by Boral. Private mines account for some 90% of Boral's holdings by area and Boral has a very strong interest in their maintenance in the existing, long established form.

Any proposal to align a private mine with an extractive minerals lease under the Act and all of the provisions that would flow from that, would have the effect of removing the private mine as a materially different form of "tenure" contrary to the Review Papers' statement that this form of "tenure" will not change.

The Review Paper notes the differences between MOPs and PEPRs under the Act. These are deliberate, material differences reflecting the different nature of the tenure and rights on which they are based. These provisions should remain as they are.

Where there are sites requiring both MOPs and PEPRs that relate to private mines and extractive minerals leases forming part of one operation, it should be for the operator to elect whether the requirements for a PEPR are to be applied to the whole site or whether the separate areas might be dealt with separately with a MOP for the private mine(s) and a PEPR for the extractive minerals lease(s). The Act should be maintained in its present form.

As indicated above, while it is suggested the MOP is a lesser requirement, this does not take into account the basis on which the private mine is established and to be regulated.

It should also be noted that there is no absence of appropriate environmental regulation in this area as quarries of a material size also require Environment Protection Act licences to operate, which provide wide ranging measures for environmental protection, whether the sites are private mines or extractive minerals leases. A combination of the requirements of the Mining Act and the Environment Protection Act provide a high level of environmental regulation at all substantial quarry operations.

In relation to the revocation of inactive private mines, the Act already contains appropriate provisions the Department could, but has not, used. Boral considers any proposal to revoke must still involve attempts to locate and consult landowners and private mine holders to avoid revocations that are not appropriate.

2.6 The Extractive Areas Rehabilitation Fund

The EARF is no longer operating in the manner in which it was intended. Despite moneys continuing to be credited to the Fund as the Act contemplates, very little has been approved for payment out in recent years. The Committee formerly responsible for its assessment has been disbanded and Guidelines for its application are inappropriately restrictive and not up to date. The Act enables the Fund to be used for "the rehabilitation of land disturbed by mining operations for the recovery of extractive minerals" and it is not being used within that general remit today. Operators who have typically been responsible for very large percentages of the revenue held to the Fund's account, have not been able to recover similar portions of the Fund for rehabilitation purposes. The Fund appears not to be invested in fact and the value of interest that could have otherwise been received on the revenue in the Fund is not accounted for. The Review Paper describes the EARF as a fund of "last resort". That description is not applied by or implicit from the Act and it should not be seen in that way.

The Fund should be reviewed with a proper mechanism for receiving and assessing claims established and it should be accounted for to its true value.

2.7 Transfer of ownership and responsibility for mine infrastructure, productive assets and mining landforms to third parties

Boral currently has no comment on these matters.

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

Matters referred to in Chapter 3 that relate to the "removal of red tape", the use of "e-Commerce" methodologies, a "one window to government" and the like are supported by Boral.

Many of the tenement issues addressed under Chapter 3 are of no immediate relevance to Boral's extractive operations, except that miscellaneous purposes licences are regarded as a useful form of tenure to accommodate infrastructure and other static operations which do not justify mining lease status.

Boral opposes any attempt to more closely integrate extractive mineral issues with those of relevance only to other mining operations. Extractive operations are quite different in their nature, scope and implication which is reflected in the fact that in some jurisdictions they are not defined as minerals for the purposes of the application of the Mining Act but are dealt with in other ways. In South Australia it may be appropriate to consider greater separation within the Act of extractive and other mining operations to avoid unnecessary consequences and complexities flowing into the extractive area.

For example, the concept of "overlapping tenements" referred to in the Review Paper is not supported in the extractive context. Extractive operations should be recognised as quite separate and should not be mixed with the tenure opportunities or requirements for other minerals.

CONCLUSION

Boral reserves its right to comment further on any of the matters addressed in the Review Paper, in particular, at a time when a draft Bill to amend the Mining Act is prepared and the true implications of what is being proposed can be seen.

As a major operator in the industry in South Australia Boral would also appreciate an opportunity to address any of these issues further when the Department has clarified its views, but before those views are committed to a draft Bill.