

**LEGISLATIVE COUNCIL**  
**Question on notice**

**Thursday, 24 September 2015**

3439. Hon Robin Chappie to the Minister for Mental Health representing the Minister for Planning.

(1) I refer to question on notice No. 3171 asked on 14 May 2015 to the Minister representing the Minister for Planning. The Minister's answer to 3171(a) and 3171(b) says that State Planning Policy 2.5 - Land Use Planning in Rural Areas (SPP2.5) "protects rural land generally and priority agricultural land in particular". The Minister states that this policy "is the principal statutory planning mechanism for protecting the State's rural and agricultural interests", and I ask:

(a) can the Minister confirm how and when SPP2.5 applies to "protect the State's rural and agricultural interests" and "priority agricultural land in particular" when resource companies seek to explore or mine such land for bauxite under the *Mining Act 1978*; and

(b) if no to (a), why not?

(2) The Minister's answer to 3171(d) states that any request to mine the Felicitas and Fortuna bauxite projects "would be considered under the *Mining Act 1978* and the *Environmental Protection Act 1986*" and "the impacts on surrounding agricultural uses and residents would form part of the deliberations", and I ask:

(a) can the Minister explain in what way SPP2.5 would be part of the deliberations under the referenced Acts if a proposal is made to develop bauxite deposits on priority agricultural land;

(b) if SPP2.5 is not part of the deliberations under the referenced Acts about impacts on priority agricultural land, how does SPP2.5 operate as the "principal statutory mechanism for protecting the State's rural and agricultural interests"; and

(c) if SPP2.5 does not operate in those circumstances, can the Minister confirm whether his replies to 3171(a) and 3171(b) are correct?

(3) The Minister's answer to 3171(c) refers to the "feasibility study" (of which there is no sign) that has been considered for a number of years (four) in respect of the Felicitas and Fortuna deposits. Bauxite Resources Limited and Yankuang Resources are in mediation of a dispute about the future of this feasibility study. Has the Minister considered the profound impacts of open-ended speculation about a large scale bauxite mine across the Shires of Toodyay, Northam and Mundaring on property values and land use planning in those Shires, and the direct impact of this adverse speculation on residents:

(a) if yes to (3), how long does the Minister consider is reasonable for such a state of affairs to continue in the interests of proper land use planning and the existing agricultural and tourism economies in those Shires; and

(b) if no to (3), why not?

(4) The Minister's answers do not distinguish in any way between bauxite on agricultural land that is subject to the jurisdiction of the *Mining Act 1978* and bauxite on agricultural land that is excluded from the Mining Act's jurisdiction, being bauxite on private land that was granted by the Crown before 1 January 1899, which is the property of the landowner - known as Minerals to Owner land (refer S9 of the *Mining Act 1978*), and I ask:

(a) in the peri-urban Shire of Cluttering which has been targeted by Bauxite

Resources and now Alpha Bauxite for six years now, is the Minister aware of the extent of priority agricultural land that is Minerals to Owner land where bauxite has been excluded from the jurisdiction of the *Mining Act 1978* and its predecessor, the *Mining Act 1903* for over 110 years; and

(b) if no to (a), why not?

(5) Given that a proposal to explore for or mine bauxite on Minerals to Owner land in the Shire of Chittering is subject to the local Town Planning Scheme which does not permit Industry-Mining as a land use and Planning principles generally, can the Minister confirm that Chittering property owners are entitled to protect their property rights and amenity by relying on the protection of their Town Planning Scheme and general planning principles, including SPP2.5, to prevent this industrial land use from being imposed on Minerals to Owner land in the Shire:

(a) if no to (5), why not?

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## Answer

(1)(a) *State Planning Policy 2.5 Land Use Planning in Rural Areas* (SPP 2.5) is created and applied under Part 3 of the *Planning and Development Act 2005 (the Act)*. This part of the Act requires planning decision-makers to have due regard to the policy when preparing and determining planning instruments including local planning strategies, region and local planning schemes and development applications.

SPP 2.5, when applied in local planning strategies and schemes, protects rural land from incompatible development, including adhoc subdivision and settlement. It recognises that rural land is capable of supporting a wide range of uses including primary production, biodiversity and landscape protection, and basic raw material extraction, and SPP 2.5 actively seeks to promote this diversity.

When land is being regularly used for agricultural purposes (cultivation), the Department of Mines and Petroleum cannot grant a mining tenement to mine the top 30m of the land, unless the owner and occupier have both consented to the granting of the mining lease, as detailed in section 29(2) of the *Mining Act 1978*.

(1)(b) Not applicable

(2)(a) Section 120(1) of the *Mining Act 1978* provides for the decision-maker, in considering an application for the grant of a mining tenement, to 'take into account' the provisions of any operative planning scheme. The preparation of local planning schemes, strategies, structure plans and amendments to any of these planning instruments would apply the policy intent of SPP 2.5.

In addition, section 120(2) of the *Mining Act 1978* provides for the Minister for Mining to consult the Minister for Planning in situations in which the local government or the WAPC has, in writing, informed both Ministers that a proposed mining lease would, if granted, authorise the carrying on of mining operations contrary to the provisions of a planning scheme. As schemes are required to apply State planning policies, SPP 2.5 would guide these consultations where schemes are in force.

(2)(b)-(c) Not applicable

(3)and(3)(a) The intention of Bauxite Resources Limited to mine its tenements is well-known, and has been taken into account in planning decision-making for some time.

(3)(b) Not applicable

(4)(a) Yes. In the Shire of Chittering some rural land that is of interest to bauxite mining companies is Minerals to Owner land.

(4)(b) Not applicable

(5) Yes

(5)(a) Not applicable

*AD.*