



1 May 2009

SUBMISSION INTO THE REVIEW OF THE PLANNING AND ENVIRONMENT ACT 1987

1.0 CEMENT CONCRETE & AGGREGATES AUSTRALIA

Cement Concrete & Aggregates Australia (CCAA) is the peak industry body for the heavy construction materials industry in Australia. CCAA's 70 member companies, which include the major national companies – Boral, Hanson, Cemex, Barro, Cement Australia, Adelaide Brighton, Blue Circle Southern Cement and Rocla, are responsible for over 90% of the industry's \$6 billion revenues. In Victoria the extractive, cement and concrete industries are together responsible (directly and indirectly) for some 8,000 Victorian jobs and \$1.2 billion to the State's economy.

The purpose of the Association is to promote and support the interests of the construction materials industry including extractive industries, cement, concrete and concrete products.

A key aim of the Association is to ensure that the extractive industry is economically sustainable for its members while being environmentally and socially responsible. Extractive industries are currently defined as the extraction and processing of construction materials including sand, stone, gravel, crushed rock and clay.

The Extractive Industry and the Victorian Government have successfully worked in partnership for many decades. This partnership approach, underpinned by the Extractive Industries Development Act (EIDA) and associated regulations, has enabled government and industry to effectively plan for Victorian needs for extractive materials. This approach to the extractive industry is unique to Victoria and in particular has ensured that Victoria (especially Melbourne) is not disadvantaged by poor planning for future extractive industry resource needs.

Over recent years the approvals process for new extractive operations, and expansion of existing operations has increased in complexity. This complexity has resulted in dramatically increased processing times as well as costs associated with the approvals process.

CCAA believes that an examination of the inter-relationship between the Planning and Environment Act and the Extractive Industries Development Act may identify significant possibilities to enhance the operation of Victoria's planning system with regard to extractive operations.

CCAA believes that a strengthened relationship between these two Acts will serve to simplify the current approvals process, eliminate areas of duplication and strengthen certainty and timeliness in the planning process.

Review Goals

The environment in which the industry operates is rapidly changing, in particular community expectations. This rapidly changing environment presents some major challenges to the planning system.

CCAA supports a review of the Planning and Environment Act that aspires to deliver the following outcomes:

1. Strengthen the relationship between the Extractive Industry Development Act and the Planning and Environment Act;
2. Better ensure that extractive resources are appropriately protected;
3. Better identify the government's planning role with respect to the extractive industry; and
4. Better co-ordinate the activities of Departments, Agencies and Local Government in relation to extractive industries, especially planning and approvals.

2. CONTEXT FOR SUBMISSION TO THIS REVIEW

Extractive Resource Security

The supply of extractive resources to the Melbourne area over the next 30 years is dependent not only on the identification of extractive resources but perhaps more importantly on the capacity to access and successfully extract these resources.

Frequently it can take seven to ten years to identify, seek planning approval and construction of a new quarry site that will often have an economic life of over 50 years. Security of resource and the ability to predict the regulatory environment over the operating life of a quarry are therefore imperative if the industry is to invest with confidence in new sites and meet the state's future demands for cost-effective aggregates.

One of the major issues impacting on the reliable and cost-effective supply of aggregates in Melbourne is restrictions, or the threat of restrictions, on expansion of existing sites. A number of major quarries in and around greater Melbourne are in this predicament. These quarries face closure over the next decade unless approval can be received to expand their operations on site. If they do close, aggregates will have to be brought in from further afield in the state, at a greater direct and indirect cost.

Distance is the critical factor in transport costs. If supply from existing quarries in and around Melbourne (say 30-35 kilometres from quarry to point of use) were to cease tomorrow and be replaced by aggregates from quarries 50 km further from the city, transport costs would rise by \$7.50 a tonne. The cost to the community through the increased use of road infrastructure, road accidents and greenhouse gas emissions would be even greater.

It is estimated that the cost of opening a new quarry of one million tonnes annual capacity is in the order of \$84 million. This is in addition to the cost and time spent in planning the development and seeking necessary approvals. Currently the planning and consent process for new quarry sites is both time consuming and costly, evidenced in: the cost of the approvals process; the cost (often at inflated prices) of buying additional land around a site to create a buffer; the cost to upgrade roads and infrastructure; and the cost of compliance with legislative requirements.

CCAA seeks the support of the Victorian Government in delivering a planning framework that recognises the importance of the extractive industry to the state's economy, and is applied fairly and consistently. Furthermore, while recognising the access needs of people who live and work in the CBD and other built-up urban environments, planning and development regulations should not be applied in such a way as to impose unrealistic conditions on extractive operations.

3. REGULATION OF THE EXTRACTIVE INDUSTRY

The Planning and Environment Act 1987 and the Extractive Industries Development Act (EIDA) 1995 are the principal legislative instruments that control the activities of extractive operations. The EIDA creates a requirement to establish a Work Plan. This Work Plan is endorsed by the Department of Primary Industries (DPI) but has no genuine status until a Planning Permit is approved by Local Government. Once a Planning Permit is approved then the Work Plan and Work Authority are approved by the DPI.

The requirements of a Work Plan (which are not explicitly defined by the EIDA) have increased dramatically over recent years as other State Government agencies refer their regulatory requirements to the DPI to apply at the Work Plan. These include ground water issues, cultural heritage management plans, native vegetation management plans as well as noise and dust issues.

Whilst the Work Plan endorsement by the DPI has no legal status, it is generally accepted that a Local Government will not consider a planning application for an extractive operation without a Work Plan endorsed by the DPI.

Consequently, it is general practice that an extractive operation proponent will obtain an endorsed Work Plan prior to making a Planning Permit application with the Local Government Authority. The Local Government Authority often can not fully assess the application for a Planning Permit for the follow reasons:

- Insufficient technical capacity and resources to assess the complex and technical matters related to the safe operation of an extractive operation. Local Government relies on state agencies to address these issues.
- Does not examine the significance of an extractive operation to the state and broader community, rather than just the impact within the local government authority area.

Reform to the Extractive Industries Development Act

The Government has recently concluded a review of the EIDA and is in the process of developing a Resources Industry Legislation Amendment Bill by 2009. This bill is intended to streamline the regulation of the mining and extractive industries by combining both industries in the one Act.

The Final Report, commissioned by the Department of Primary Industries, on the Review of the Efficient Regulation of Victoria's Extractive Industries contains a number of recommendations in regard to the approvals process. The review concluded that these recommendations would make the "up-front" approvals process more robust and accountable.

In respect of the approval process, the Review made the following recommendations:

1. In recognition of the value of DPI's role in coordinating the up-front process and assisting the extractives industry, it is recommended that DPI continue in this role.
2. In order that the up-front process is more cost-effective from a Government-wide and local government perspective, it is recommended that the up-front process be made more robust and accountable, and that the following steps be taken to formalise the process:
 - when referral authorities sign off on a draft work plan, they indicate that they do not need to see the proposal again if it has been signed off within the past three months, unless an issue is raised in the public notification process that was unknown or inadvertently missed during the original process, or is in contravention of the planning provisions;
 - Establish clear guidelines for proponents and referral authorities that are unambiguous and include firm timelines;
 - clarify in all documentation that an 'endorsed' Work Plan means only that it has been signed-off by all relevant agencies; or alternatively, replace the word 'endorsed' with a less ambiguous term such as 'completed'; and
 - Include the formalised process in practice notes so that all agencies are aware of the avenues available under the Planning and Environment Act 1987, and their obligations in respect of the up-front process.
3. While noting that overlays are a matter for the Minister for Planning and the Department of Planning and Community Development, it is recommended that they be requested to: explore the feasibility of applying extractive industry overlays into the Victorian Planning Provisions; and apply them to existing sites where practicable.

The Victorian Competition and Efficiency Commission (VCEC) has also recently conducted a review of environmental regulation including the Planning and Environment Act. They identified considerable cost savings to be made by increasing the efficiency of the planning approvals process for extractive industries.

4. KEY ISSUES

Key Issue 1: Land Use Planning: Resource Access and Protection: Community Expectations

The economics of the extractive industries are such that there is a need to locate the supply source as close as possible to the demand use, as transportation costs are the greatest variable cost in extractive industries.

These economic factors explain why the majority of quarries are generally located on the outskirts of metropolitan areas. This creates a land use planning issue, particularly during periods of rapid urban expansion, as there is convergence of incompatible land uses (namely quarries and residential housing).

The industry has, where possible, responded commercially by purchasing land to create buffers between these land uses. However, it is not always possible to achieve a commercial outcome and hence, the Government plays an important role in balancing the needs of these incompatible land uses.

These land use planning issues are likely to become of greater significance as the expectations of the community regarding public amenity continue to rise. Consequently, there is an ongoing priority need for future land use planning to protect both public amenity factors as well as to ensure that the future extractive material needs of Melbourne are met as cost effectively as possible.

CCAA recommends that the review of the Planning and Environment Act should recognise the changing expectations of Victorians with respect to public amenity. The review of the Act presents an opportunity to accommodate and manage these changing public expectations.

Key Issue 2: Coordination of Planning Approvals for the Extractive Industry

The Victorian Government has been the key player in regulating for the protection of stone resources through the DPI. The Department of Planning and Community Development (DPCD) through the Planning Act regulates land use activities, as does Local Government through their powers in the Local Government Act.

The interrelationship between these departments and Acts is complicated and increasingly ambiguous. The planning process and the work authority process are more often than not poorly co-ordinated. There is great scope for streamlining these processes. There is also scope to explore a range of options to facilitate these processes such as introducing a “mediator” into the system to deal with applications.

Key Issue 3: Native Vegetation Framework

The Planning and Environment Act 1987 establishes a framework for planning the use, development and protection of land in Victoria. One of the key objectives of planning in Victoria is to provide for the protection of natural resources and the maintenance of ecological processes and genetic diversity. One way the planning framework does this is to establish controls over the clearing of native vegetation on private land.

The Victorian Government's policy framework for native vegetation management was released in 2002. The Framework's main goal is to "achieve a reversal, across the entire landscape of the long-term decline in the extent and quality of native vegetation, leading to a net gain".

CCAA has long held concerns regarding the application of the Native Vegetation Framework to Victorian Extractive Industries. These concerns emanate from a simple observation that the vast majority of extractive operations require the removal of native vegetation to access the extractive resource. Consequently, the implementation of the Native Vegetation Management Framework to Extractive Industries will centre on the processes and institutional arrangements surrounding offset obligations.

CCAA believes that there are significant problems with several aspects of the framework including:

- Overly complex arrangements to identify the quantity and quality of existing vegetation on an extractive site;
- Policy defining habitat hectare calculations and resulting offset requirements;
- The availability and price of appropriate offset vegetation;
- the failure to recognise existing rehabilitation plans and the long term offsets they will provide; and
- The framework values native vegetation but does not consider the opportunity cost associated with sterilisation of valuable stone resources.

NCCAA concerns indicate that the Native Vegetation Management Framework Guidelines are likely to be inefficient and ineffective and in their current form will result in sub-optimal outcomes from all perspectives.

Planning for extractive operations is done on lengthy timeframes, often over several decades. The extractive industry is already subject to rehabilitation of extractive sites under the Extractive Industry Development Act. This rehabilitation includes revegetation of extractive sites. Offsets for onsite rehabilitation should reflect the longer term outcome.

5. SPECIFIC PLANNING ISSUES

Planning provisions effectiveness in protecting extractive resources

Current provisions have been generally effective in protecting extractive resources and sensitive land uses. Nevertheless, it is clear that these provisions will not continue to provide effective protection.

This is due to a range of issues including:

- Rapid urban growth and expansion which has increased the incidence of non-compatible land uses adjoining each other, ie encroachment of residential and intensive land uses upon existing and future extractive industry areas;
- Rapidly changing community expectations and standards; and

- Divergence between state and local government planning schemes.

Is the current and future development of the industry provided under the current planning policies and instruments?

The future development of the Extractive Industry is not adequately provided for under the existing planning policies and instruments. There is an urgent need to ensure that the environmental, social and amenity considerations do not supersede or extinguish the importance to Victoria of having access to well positioned extractive materials.

There is an opportunity in the current review of the Act to ensure the future sustainability of well located extractive industries and to mitigate the possible factors that may diminish access to these resources.

Buffers for Extractive Operations

Buffers can be highly effective in managing issues between incompatible land uses. Nevertheless, some Councils fail to include these buffers in their planning overlays, which opens the buffer to other land uses thus rendering them ineffective.

Requests for Information

Timelines on various approval processes especially for further information requests should be reviewed. Currently the 28 day timeline often results in agencies seeking further information on day 27. This can then trigger a new cycle of 28 days.

Recognition of Extractive Industry Work Plans by the Planning and Environment Act

CCAA values the co-ordination provided by the DPI in the approvals process of an extractive industry. The DPI's provision of Work Authority and Work Plan provide excellent guidance to Local Government consideration of a proposed extractive operation. CCAA seeks that the approvals processes have greater formality and that statutory rights are assigned to Work Plans. The establishment of legal rights for an extractive industry Work Plan would enable a better coordinated assessment procedure.

6. MODERNISING VICTORIA'S PLANNING ACT

This section is CCAA's response to the questions raised in the discussion paper

6.1 Purpose of the Review

CCAA Comment: CCAA Members strongly support the purpose of the review especially the opportunity to modernise the Planning and Environment Act 1987 in order to simplify the current laws, eliminate duplication, and strengthen certainty and timeliness in the planning process.

6.2 Scope of the review – a new car or a major service?

CCAA Comment: This first and most important question raised by this review is whether the Planning and Environment Act requires a completely new approach or a significant upgrade.

CCAA agrees that the "major service" option is the appropriate methodology to adopt for this review, as it is myopically focused on the Act rather than the supporting agreements which support the Act. CCAA contends that it is the supporting arrangements to the Act (including state and local policies, the Victorian Planning Provisions, the planning schemes) and the regulations which result in suboptimal outcomes.

CCAA believes that this review is limited in its capacity to improve good planning outcomes because it does not include consideration of matters such as the merits of state or local policies or the operation of the Victoria Planning Provisions (VPP), planning schemes or the Victorian Civil and Administrative Tribunal (VCAT).

6.3 The Planning System and the Planning and Environment Act 1987

CCAA has the following central points regarding the Act:

The Planning and Environment Act should explicitly acknowledge the Extractive Industries Development Act.

The Act should be more prescriptive about the relationship between the Planning and Environment Act and the Extractive Industries Development Act.

The Planning and Environment Act should explicitly acknowledge the Native Vegetation Framework. The Native Vegetation Framework resides in sub-ordinate instruments to the Act. The Native Vegetation Framework has draconian impacts upon the viability of most extractive industry developments. Consequently, the Framework should be dealt with by the Act rather than through VPPs. In this way the Framework will be subject to appropriate scrutiny by Government.

6.4 *What's in a name?*

Questions

- Is the role of legislation in a modern planning system substantially similar to that described in 1987?
- Should the scope of planning legislation be widened to include other matters?

CCAA seeks that the scope of the planning legislation should be expanded to explicitly acknowledge both the Extractive Industry Development Act and the need to protect extractive resources.

- If so, what should they be, and why and how do they need to be covered in legislation?

CCAA believes that the Work Plan endorsed by the Department of Primary Industries should be acknowledged in the legislation.

- How should planning for land use and development interact with other aspects of planning – for example, planning for development of education and health facilities, provision of roads and transport?

CCAA Comment: As above – Specific reference to the Work Plan endorsed by the DPI under the Extractive Industry Development Act.

6.5 *Are the objectives of planning in Victoria still relevant?*

The objectives of planning in Victoria as set out in section 4(1) of the Act are:

- a to provide for the fair, orderly, economic and sustainable use, and development of land;
- b to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity;
- c to protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community; and
- d to balance the present and future interests of all Victorians.

Questions

- Are the objectives of planning in Victoria still relevant?

CCAA Comment: Yes

- Are the objectives for Victoria's planning system still relevant?

CCAA Comment: Yes – However the protection of natural resources (including extractive resources) appears to be subservient in the current system.

- Have significant words such as environment, social and economic changed in the way they relate to land use planning and, if so, how?
- Would including specific reference to issues such as housing affordability, climate change, and health and wellbeing assist in achieving the policy objectives for these matters? What are the matters that should be included?

CCAA Comment: Reference to these issues could assist in achieving policy objectives for these matters. Well located extractive resources do make housing more affordable and reduce greenhouse gases.

7. THE PERMIT PROCESS

7.1 *One size fits all?*

Questions

- Is there a need to change the permit process to make it more responsive to the scale and complexity of a proposal?

CCAA Comment: The permit process should formally recognise an extractive industry work plan endorsed by the Department of Primary Industries under the Extractive Industries Development Act.

- Should the Act provide for a 'short' permit process? If so, what should be the essential steps and requirements of this process? What kinds of applications could this process apply to?

CCAA Comment: Not applicable to extractive industry.

- What are the other options for streaming applications?

7.2 *Lodging an application*

CCAA Comment: Questions proposed are not applicable to the extractive industry.

7.3 *Notice of an application*

CCAA Comment: Questions proposed are not applicable to the extractive industry.

7.4 *Objections*

Questions

- Should the responsible authority have a greater discretion to reject an objection?

CCAA Comment: Yes – The responsible Authority should recognise when an objection to a planning permit intends to complicate and frustrate the permit process when frivolous, vexatious or irrelevant objections are made. The ability for a responsible authority to disregard or reject these kinds of objections could address this issue, provided that appropriate criteria or guidance is provided to ensure that natural justice is maintained.

- Should an objector be required to provide more specific information about how they might be affected by a proposal in their objection?

CCAA Comment: Yes – The objector should be required to provide more specific information about how they might be affected by a proposal in their objection.

7.5 Referrals

Question

- How could the Act be changed to encourage the more effective and timely input of referral authority requirements in the permit process?

CCAA Comment: Extractive Industry planning permit applications are accompanied by a Work Plan which is endorsed by the Department of Primary Industries under the Extractive Industries Development Act. The endorsement of this work plan only occurs after an exhaustive referral process with other State Government Agencies.

Local Government is obliged to refer an extractive industry planning application back to these state agencies, which results in duplication of process as well as negatively impacting upon the permit application timelines.

The Planning and Environment Act should be amended to explicitly state that a Work Plan endorsed by the Department of Primary Industries does not require referral back to these agencies.

7.6 Making a decision

Questions

- Should the Act set out a clear hierarchy of policy documents to be considered by a responsible authority?

CCAA Comment: Yes

- Should the Act provide for different decision-making considerations for different classes of applications?
- Are the times prescribed by regulation in which certain decisions should be made appropriate? Should other matters also have prescribed times?

CCAA Comment: All matters should have prescribed times.

7.7 Conditions

Placing conditions on a permit is one of the principal tools used by a responsible authority to achieve appropriate planning outcomes when approving use and development.

Questions

- Does the ongoing life of conditions on a development permit need to be clarified?

CCAA Comment: Yes – In the case of extractive industries there are issues around the intermittent use of extractive operations. Sites may require a long lead in time before extraction begins and, in some cases may stop for a period of time. The current time frames within the Act are two years for start up and two years discontinuance. This should be changed to state that the use begins with the granting of the work authority.

Start up and discontinuance are commercial decisions made by extractive operators according to market conditions. The development permit should apply for the life of the resource.

7.8 Amending a permit

Questions

- Should the process provided for in section 72 allow for a responsible authority to amend a permit issued at the direction of VCAT, and in what circumstances?
- Should section 216 now be repealed?
- Should the Act set the principles for when the use of a secondary consent permit condition is appropriate?
- Is there a need to provide a process for seeking and recording secondary consent approvals?
- Should the section 72 process be simplified in the case of 'minor' amendments to avoid what in some cases amounts to a full permit process, and how can this be done?

7.9 Enforcement

CCAA Comment: No comment.

8. Planning schemes and the amendment process

CCAA Comment: Planning schemes and the amendment process are of great interest to CCAA members when they impact on the Planning Permit process involved in the development of a new or existing extractive operation. In particular the extension of an existing operation is subject to a planning scheme amendment process.

9. State-significant projects

Questions

- Would there be benefits in creating a specific planning process for the assessment of State-significant projects?

- What process should be followed for deciding which projects which are of State significance?
- What is the most suitable process for evaluating and deciding State-significant projects?

Major extractive industry projects have been referred to the Environment Effects Act 1978 in order to assess whether they have a significant effect on the environment. CCAA believes that this referral should be subject to the applicants consent.

CCAA has a range of issues surrounding the Environmental Effects Statement (EES) process defined by the Environmental Effects Act 1978. In particular the EES path appears to be a means of dealing with community agitation and is consequently subject to political influence.

In particular the scoping arrangement of an EES, which involves a Scoping Workshop, typically attracts a range of protest groups which introduce a very broad range of issues for consideration. The DPCD/DSE facilitates these sessions and does not at any stage attempt to constrain irrelevant or spurious issues. Each issue requires full investigation, irrespective of the merits or significance of the issue.

Generally a Technical Reference Group (TRG) is established to explore these issues. The TRG usually consists of Council, EPA, DPI, DSE and the public. In the case of the EES undertaken for one extractive planning permit application, the TRG was required to undertake years of monitoring in a range of sites to satisfactorily address concerns regarding dust. At the end of the process it was clearly established that the extractive operation generated less harmful dust than currently existed in the ambient atmosphere.

CCAA believes that the EES focus should centre on critical environmental identified issues rather than the whole gamut of issues raised by community groups.

The Technical Reference Group is an attempt to deal with genuine environmental and amenity issues. CCAA believes that issues that have been fully examined and investigated by a Technical Reference Group should not be referred back to State or Local Government or the public. All these stakeholders should be represented on the Technical Reference Group.

10. Governance and decision-making

Governance and decision-making are only of interest to CCAA members if they impact on the Planning Permit process involved in the development of a new or existing extractive operation.

11. Section 173 agreements

CCAA Comment: No comment

12. Interaction with other legislation

- Are there areas where the operation of the Act is in conflict or produces inefficiencies in the interaction with other legislation?

CCAA Comment: The Act and planning schemes can affect matters that are also subject to other legislation, such as extractive industry. The interaction between the Act and planning schemes and the Extractive Industry Development Act is poor and results in significant inefficiencies.

13. Other identified issues

CCAA Comment: None