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Dr Michelle Delaire
Director Regulatory Transition Taskforce – Resources Division
DJPR
Melbourne VIC 3000
Via engage.vic.gov.au

Dear Dr Delaire

RE: Preparation of Work Plans and Work Plan Variations– Guideline for Extractive Industry Projects

Construction Material Processors Association (CMPA)
The CMPA is dedicated to the representation and service of its Members in the Victorian Earth Resources industry. The CMPA represents a broad spectrum of businesses that extract and process hard rock, gravel, sand, clay, lime, and soil. CMPA members also operate recycling businesses. CMPA members are typically small to medium sized family and private businesses, local government and utilities. Many are regionally based employers and service local construction, infrastructure and road maintenance needs. The extractives sector is a key pillar within the construction industry underpinning the growth and economic development of Victoria through supply of the construction materials.

In 2018/19, the sector supplied 63 million tonnes of construction materials to the market, at a value of approximately $1.1 billion. Small to medium quarries account for approximately half of this production.

The CMPA supports the principle of responsible, balanced legislation that is in the best interests of the State of Victoria and Australia.

Thank you for the opportunity to comment on the above Preparation of Work Plans – Guideline for Extractive Industry Projects (Guideline).

The Guideline is fundamentally flawed:

1. Risk assessment process
- All inherent risk, where no controls are in place, will lead to catastrophic outcomes and so is a moot exercise. (p.19)
- The consequence and likelihood tables have not been validated against the risk matrix. (p.39).

- Effective risk management requires that all **unacceptable** risks are eliminated or reduced as far as reasonably practicable. (p.20, 32). The process as described aims to eliminate all risk which is unattainable, for example:

  "Although government interventions are often aimed at reducing risk to the community, there are no circumstances which are entirely risk-free and it is not possible to for governments to eliminate all risks." https://www.vic.gov.au/how-to-prepare-regulatory-impact-assessments

  "The National Law does not require services to eliminate all risk and challenge from children's play or environments." https://www.acecqa.gov.au/sites/default/files/2018-01/NQF-Resource-02-Guide-to-ECS-Law-Regs.pdf

  "Speaking to The Australian this week, the Treasurer sent a firm message to ASIC: "You cannot, and you should not, seek to eliminate all risk from financial transactions. People need to take personal responsibility for their own financial circumstances, and banks in turn have to undertake the necessary due diligence."
  https://www.theaustralian.com.au/commentary/life-is-a-risk-and-risk-should-never-be-unacceptable/news-story/ad8d554354dd48fb03d6c04841bc8d7f

  "A challenge for both government and the community, and therefore regulators, is acknowledgement that not all risks can be eliminated through regulation and that sometimes trade-offs must be made between risk reduction and costs." Queensland Productivity Commission REGULATORY ADVICE Red Tape Reduction Advisory Council Recommendations 2017

2. That which is proposed must be practical and achievable and not result in regulatory creep. The resultant work plan and attached documents must be able to be read and implemented by those on site, contain itself to those matters related to the MRSDA, and not require frequent revisions on the basis that management plans are living documents. It must be able to be used by ERR Inspectors and those on site as an auditing tool.

3. The regulator needs to address how it will manage and disseminate the ever-increasing risk register it holds whilst at the same time ensuring that the approvals process is not excessively complex and costly.

4. The Guideline does not consider proportionality for lower risk sites: it is essentially the same as that for the much higher and different risk Mining Industry and accompanying Work Plan Guideline. Additionally, at the information session held in August 2020, it was noted by a participant that the requirements are effectively the same as for an Environment Effects Statement.

5. The excessive financial cost and threat of new risks being presented by third parties with clear self-interest have no ceiling to the outcomes occurring over time and ensure future entry into the sector is further restricted and has a financial impact on the site's viability.

6. Pre -submission communication does not appear in the flowcharts as a step in the process.

7. Since the new format risk work plan journey started, good or informative/helpful communication with ERR has been removed from the process – the opportunity to discuss grey areas is now not encouraged by ERR.

8. There seems to be added complexity with the original idea of simplicity gone. The low-medium risk should be simple/standard and not the focus of more and more detail and/or requirements.

9. The split in layout for Work Plan – Administrative Update - Work Plan Variation sections is a sensible approach but the way it has been presented comes over as repetitive.

10. Administrative Update – the information provided (p24-25) is at least allowing the industry to see ERR commit to their policy but the language still shows the arbitrary nature of their decision process and timelines.

11. The "Initial Proposal Information Request" has more "requirements" in the "Site context Plan" elements – generally, ERR have virtually required most of the design/proposal work to done before proponents receive feedback from the site consultation where potentially many proposals are altered – a cart before the horse issue. This added information seems to be for the benefit of officers "assessing" from their computer/desk.

12. Risk Register – the amended table is a debacle. The original intention and function being a simple summary that concisely shows the risk assessment for each hazard. This version would be very cumbersome (assuming all management controls are added which can be numerous) and again increases complexity.

13. Risk Treatment Plan(RTP) – this seems to be rearranging of the deck chairs. Most benefit would be gained from more representative examples and including the more difficult areas such as groundwater, water discharge, slope stability (hard rock and soft rock) simple and concise for small or low risk sites.

14. Performance standards (RTP*)* - Terminology is becoming confusing i.e. performance standards can be objectives or compliance standards and seems also at odds with "acceptance criteria".

15. Generally, the document seems to be less well organised than the 2018 Guideline, and contains just as many if not more repetition, which is disappointing given that these "improvements" were meant to be one of the primary drivers in the review.

16. Definitions: Some key definitions seem to be missing, i.e. risk, extraction area, depth of extraction, buffer, ancillary operations, significant increase to name a few.

17. There is an overlap of "flow charts" and an inconsistent referencing to the actual, specific requirements of the MRSD (Extractive Industry) Regulations.

18. Pre-submission steps: There is no commitment or time frame associated with this process. (Turnarounds have been reported of only days, to in excess of 20 weeks)

19. The sections dealing with Community Engagement (2.4.9 and 3.3.12) does not list the MRSDA requirements accurately and introduces the suggestion that ERR are notified following every community complaint/feedback. It also adds "*determining agreed environmental outcomes*" to the objectives of a Community Engagement Plan.

20. Concerning Rehabilitation (2.4.10 and 3.3.13) a new post closure objective of "*visually acceptable*" has been added without any corresponding change in the Regulations (which require "*landscaping to minimise the visual impact*"). In Section 3.3.13 a completely new requirement of "*if water is to be used as the final rehabilitated closure (ie lake, dam) provide details of how the water is secured*".

21. A comment on the introduction of "Rehabilitation hazard" is warranted. It is acknowledged that this has been necessary due to the recent change in the Regulations but it should be stated that such a distinction (between a quarrying hazard and a rehabilitation hazard) is tenuous at best and will potentially remove the desired emphasis on progressive rehabilitation. Rehabilitation "activities" are conducted in large measure by the same plant, equipment and personnel that are involved in routine quarrying operations and with few exceptions, the hazards will be common. This is distinct from post-closure hazards and their associated risks. Rehabilitation should be seen by the quarry operator as part of the normal quarrying cycle, and the "progressive" rehabilitation nothing more than good practice. The introduction of a specific "rehabilitation hazard" will compartmentalise this activity.

22. There has been no change to the stated objectives of a work plan (sec 2.4.1), and this continues to be a fundamental blind-spot for ERR. The two objectives, from ERR's perspective, remain the ability to assess the proposed activity prior to approval and as the basis for compliance/enforcement thereafter. Given that the 'Purpose' of the MRSDA "*is to encourage …. economically viable … extractive industries which make the best use of, and extract the value from, resources in a way that is compatible with the economic, social and environmental objectives*…" it might be expected that ERR could acknowledge that the work plan is as much a required management tool as it is a regulatory one – as noted to some degree in the definitions. For the purpose of the MRSDA to be achieved, the Work Plan in conjunction with other corporate documents, needs to provide quarry management with the necessary guidance in a clear and appropriate way to fulfil their responsibilities.

23. The work plan development, submission and assessment process guidance go to some lengths to describe the 'pre-submission' and site meeting requirements. At a number of points the Guideline notes that these are "*recommended (only)*", and "*strongly encouraged*". No-where does the guidance point out that ERR will not allow an application to proceed without these steps being undertaken to their satisfaction, by refusing to create a RRAM shell for the proposed work plan, despite the reality that these steps are not required by legislation.

24. Some specific points regarding site meetings and the subsequent process are:
    - For greenfield sites and some work plan variations, a site meeting is extremely usefully in understanding agency requirements. For most work plan variations site meetings are not necessary.
    - The amount and detail of information required in the 'initial proposal information' has continued to grow to the point of requiring significant time and resources before any actual work plan development – an upfront cost in terms of time and money when the process is meant to be steam lined and simplified
    - Due to there being no legislative basis for this pre-submission activity there is no corresponding obligation on ERR or other agencies to respond to requests in a specified or timely fashion, let alone attend meetings. Simply getting a list of "required site meeting attendees" from ERR takes 4 to 6 weeks.
    - It is incumbent on a proponent or applicant to ensure that, through appropriate engagement, the submitted work plan meets the requirements of subsequent referral

agencies. It is not ERR's role to undertake the assessment and review of specialist matters that are the legislative responsibility of other agencies. Should a work plan fall short of meeting those requirements, resulting in an agency refusal, it is the proponent or applicant who understands and accepts that risk not ERR

25. The usefulness of *Administrative Updates* is limited by the same lack of legislative backing. The engagement ERR require with "relevant referral agencies" is often difficult or impossible to conduct in a timely or reasonable fashion with agencies who are under no obligation to participate. The Guideline introduces an "*Administrative update co-regulator contact template*", as if this will give the process some legitimacy / timeline. Tenement holders are often better off pursuing the assured (albeit excessive) timelines of a formal work plan variation, which is often accompanied with the same amount of paperwork, effort, and resources.

26. One of the criteria for an *Administrative Update* is no "*significant increase in risk"*. Although this does not apply if the risk being considered remains unchanged at "*high*". There is also the problem of ERR's risk matrix, and the fact that no other agency uses it and therefore cannot make judgements based on it. There is also on-going confusion over what constitutes a change in the Rehabilitation Plan – examples of acceptable *Administrative Updates* include expanded extraction areas, changes to plant or quarry layout, yet these things fundamentally change the Rehabilitation Plan that would have previously been approved. It is suggested that this be reworded to Rehabilitation Objective.

27. The Guideline's advice concerning the Risk Assessment Process (Appendix)

    - Introduces the concept of "eliminated" as a risk rating. Whilst it is acknowledged that this has always been mentioned in the regulations, it has now been provided as an acceptable risk rating, without any pathway to getting there – it's not in the Risk Matrix, nor mentioned in the discussion on Consequence or Likelihood. Recent work plan submissions have been rejected, with subsequent and significant delays and costs, due to ERR bizarrely insisting that a hazard/risk should be described as eliminated.
    - There should be some clarification around the term "EVIDENCE" in relation to the sensitive receptors section of the Risk Register. Nowhere in the document does it suggest a specialist report is required, yet the example in B2 quotes "dust modelling report" This could be used by some approval officers to demand the applicant prepare the relevant specialist reports for all hazards, even those that this guideline are suggesting does not require an RTP. If industry standard controls are all that is warranted, an RTP is (possible) not required, and yet a specialist report is required to show this.
    - The Risk Register has now been expanded to include significant information (but not all) that would have appeared in a Risk Treatment Plan. There is a suggestion that an RTP is only necessary for residual risks of medium or above, and yet the example suggests two '*medium*' risks, one with an RTP and one without? It is considered that all risks in the risk register should have an RTP as part of the complete management tool that the Work Plan should provide, as it contains significant information (for both regulator and quarry operator) even for low residual risks.
    - If the intent of the "revised risk register" is to simplify the process, only requiring RTP's for those specific risks of whatever the minimum rating is, where is this discussed / justified? Additionally, the revised risk register is an unwieldy document, one that does not really work as a hard copy.

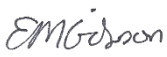
28. ERR Compliance Officer Training: There is still a wide variety of interpretation across the different approval officers, which needs to be addressed. There are many examples but a trivial one is the interpretation of depth of quarry, for which work plans are returned because it is considered to have provided the wrong value.

29. The process to be listed on the Extractive Industry Priority List needs to be included.

The CMPA is committed to working with DJPR to find a practicable and less costly way forward to ensure that small to medium quarries will continue to exist and contribute to Victoria's economic growth.

Please do not hesitate to contact me if you would like to discuss further.

Yours sincerely



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