

1 February 2021

Dr Michelle Delaire  
Regulatory Transition Taskforce  
Earth Resources, DJPR  
Milton House, 21-25 Flinders Lane,  
Melbourne,  
Victoria Australia 3000

Via website: <https://engage.vic.gov.au/preparation-rehabilitation-plans-guideline-extractive-industry>

Dear Dr Delaire

#### **PREPARATION OF REHABILITATION PLANS: GUIDELINE FOR EXTRACTIVE INDUSTRY PROJECTS**

The Construction Material Processors Association (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 Preparation of Rehabilitation Plans Guideline for Extractive Industry Projects Consultation draft November 2020 (Draft Guideline). The CMPA has long recognised the importance of rehabilitation having held a Progressive Rehabilitation (extractive industry) Workshop in February 2017 (<https://sandandstone.cmpavic.asn.au/progressive->

[rehabilitation-workshop/](#)) with a view to developing a Progressive Rehabilitation Management Plan Template.

The CMPA response is as follows:

### General comments

The Draft Guideline is somewhat disappointing in that:

Large swathes (including the front cover) are copied from the Preparation of Rehabilitation Plans Guideline for Mining and Prospecting Projects February 2020.

Using the same criteria as mines is inequitable because, among other things:

- Sand, stone and gravel do not catch fire;
- Toxic processing chemicals (cyanide and mercury) are not used by the extractive industry;
- Quarries have a smaller footprint, less overburden and generally shorter operating hours;
- Quarries are not underground.

Whilst a “proportionate approach” is advocated in the Draft Guideline, which is 67 pages long, it would be beyond the majority of current Work Authority holders (which are mostly small quarries) to prepare a rehabilitation plan according to the Draft Guideline. It would also inhibit new, small quarry entry into the market.

Old quarries are valuable assets which go on to have innovative and often unexpected uses, shaping and shaped by the communities in which they are located. Combined with a long and complex regulatory landscape the extractive industry sector has had no failures over many years. The Draft Guideline as it currently stands has not kept these facts in focus. This should be formally recognised at the start of the Draft Guideline to frame the subsequent instructions.

### Specific comments

Page number	Draft Guideline	CMPA comments
2, 1 <sup>st</sup> para	<i>“This guideline aims to enhance regulatory certainty and minimise regulatory burden through its adoption of an outcomes-based and proportionate approach.”</i>	A worthwhile and strongly supported aim, however, it is doubtful that the Draft Guideline in its current form has achieved this.
2, 7 <sup>th</sup> para	<i>“This guideline sets out how the new rehabilitation framework (Regulation 11(2) of the Regulations) will be applied proportionately to each site.”</i>	
4, fig 1.	<i>“Process to develop a rehabilitation plan”</i>	It is good to have a summary of the process to develop a rehabilitation plan, however, it appears that there is much overlap with the requirements for the work plan
5, 3 <sup>rd</sup> para	<i>“While upfront clarity in rehabilitation obligations and</i>	The important and supported phrase is <i>“...what level of information and knowledge can reasonably be</i>

Page number	Draft Guideline	CMPA comments
	<i>outcomes is important, it needs to be viewed in the context of what level of information and knowledge can reasonably be expected at the application stage of a quarry."</i>	<i>expected..."</i> . ERR needs to have pragmatic and realistic expectations.
6, 6 <sup>th</sup> para	<i>"In general, the more detail that is included in a rehabilitation plan that demonstrates risks will be reduced as far as reasonably practicable, the more accurate a rehabilitation bond will be."</i>	The detail is only a prediction of what rehabilitation is to occur: a realistic and concise rehabilitation plan is what should be sought by ERR. "...as far as reasonably practicable..." needs to be defined.
6, 6 <sup>th</sup> para	<i>"Where there is limited information provided or available, the cost associated with uncertainties needs to be calculated at the highest rate to ensure that the bond will cover the cost of rehabilitation if required."</i>	This statement is somewhat threatening and the outcome disproportionate. It is disagreed that the bond needs to be calculated at the highest rate because "...limited information is provided or available...". Realistically, information provided will be limited; if overly descriptive then should be treated with caution by ERR
7, 1 <sup>st</sup> para	<i>"The level of detail and supporting information required in a rehabilitation plan should be proportionate to risk."</i>	Proportionality is lacking throughout the Draft Guideline
7, 5 <sup>th</sup> dot point	<ul style="list-style-type: none"> <li><b>"The level of assurance required – small simple quarry operators should be able to complete a rehabilitation plan themselves."</b></li> </ul>	The complex and lengthy Draft Guideline together with the onerous, repetitive, and duplicated requirements may not allow small simple quarry operators to complete a rehabilitation plan themselves.
8, 1 <sup>st</sup> para	<i>"Earth Resources Regulation will have regard to established industry best practice, and agreed standards where relevant (for instance, engineering standards for stability)."</i>	Where is established industry best practice defined?
8, 3 <sup>rd</sup> para	<i>"The focus of the assessment will be on injuries and illnesses to the public that are reasonably foreseeable to result from the operations or the proposed rehabilitated land. Injuries include physical</i>	Fencing can be cut.

Page number	Draft Guideline	CMPA comments
	<i>harm or damage to a person’s or an animal’s body and usually include sudden physiological change. Illnesses may include physical ailment, disease, disorder or morbid condition whether of sudden or gradual development and applies to humans and animals.”</i>	
9, table	<ul style="list-style-type: none"> <li>• <i>“Falls from uneven ground</i></li> <li>• <i>Crushing from rock falls</i></li> <li>• <i>Injury from dangerous infrastructure</i></li> <li>• <i>Injury following unauthorised access to restricted area</i></li> <li>• <i>Drowning in unsafe waterways”</i></li> </ul>	As said previously, fencing can be cut and warning signs ignored.
9, 2 <sup>nd</sup> para	<b>“Structural</b> – <i>relates to any built structure that is proposed to remain on site after surrender of the work authority. Earth Resources Regulation will have regard to the relevant engineering and construction requirements and standards.<sup>1</sup>”</i>	ERR has limited experience and expertise in this area.
9, 3 <sup>rd</sup> para	<b>“Geotechnical</b> – <i>the geotechnical characteristics of the site that will influence the stability of the rehabilitated land, including the slope of designed (e.g. waste rock areas, dams and voids) and natural site aspects (e.g. original slope of the land, weathering characteristics and other geological features). Refer to Earth Resources Regulation Geotechnical guideline for terminal and rehabilitated</i>	The geotechnical characteristics of the site will only be revealed as it is opened up and quarried. The ERR Geotechnical Guidelines only give the status of geotechnical stability at a point in time and is not flexible in allowing for changing geotechnical stability with time. Due to the changing nature of geotechnical stability with time, numerous variations to the Rehabilitation Plan thereby triggering variations to the Work Plan and all that entails.

<sup>1</sup> Guidelines for Open Pit Slope Design, Read & Stacey p.69.

Page number	Draft Guideline	CMPA comments
	<i>slopes – Extractive Industry Projects for further guidance”</i>	
10, text box	<i>“The post-quarrying land form should regard the principles of sustainable development set out in the MRSD Act.”</i>	The principles of sustainable development are unattainable and disproportionate for small/medium quarries.
11	<i>“Rehabilitation plan content”</i>	A small quarry rehabilitation plan template would be useful considering that they comprise over 50% of current quarries.
11, last para	<i>“This section sets out the site-specific knowledge that you have, or will gather, over the life of the quarry. It includes the understanding of the pre-quarrying site conditions and local setting. You should provide the level of information required for Earth Resources Regulation to have sufficient detail to ensure rehabilitation will meet the agreed objectives and end land use(s). Where there is a lack of detailed knowledge, or information gaps, Earth Resources Regulation will take a conservative approach and the lack of certainty may impact on the rehabilitation bond assessment.”</i>	The rehabilitation plan can only ever be an approximation and will change with time. Information will be lacking due to unknowns, for example, the rock is not homogenous, and properties will not be known until the quarry is opened up, hence, there will be uncertainty. For ERR to threaten a conservative approach in the rehabilitation bond assessment is unproductive.
12, 3 <sup>rd</sup> para	<i>“Provide a comprehensive register of all rehabilitation-related legal obligations, conditions and commitments set out in approved documents at the local, State and Commonwealth Government levels (e.g. approvals and licences). Outline how these obligations will be met and how they have been incorporated into the rehabilitation plan and actions. This will provide a holistic picture of the legal framework governing the current and future uses of the site and will guide the</i>	A register of all rehabilitation-related legal obligations will most likely be the same for each rehabilitation plan. Surely ERR has the capacity to provide and update. The conditions and commitments will be in the work plan so the exercise is repetitive.

Page number	Draft Guideline	CMPA comments
	<i>development of the rehabilitation objectives and criteria.”</i>	
12, 4.3.3	<i>“Environmental and social setting”</i>	This is also covered in the work plan.
13, 3 <sup>rd</sup> para	<i>“This guideline does not diminish the requirements in section 77K of the MRSD Act that require you to consult with the community throughout the period of the work authority. Earth Resources Regulation has developed the Community Engagement Guideline for Mining and Mineral Exploration in Victoria to support best-practice community engagement.”</i>	Stakeholder engagement and community consultation is also required for the Planning Permit unlike for mines which do not require a Planning Permit.
14	<i>Information requirements – community consultation</i>	Community consultation is required for the work plan. Is it being suggested here that a separate round of stakeholder re-engagement is required for the rehabilitation plan? This is in addition to the consultation required during the application for the Planning Permit.
15, 1 <sup>st</sup> para	<i>“Land (including water) following rehabilitation should be able to be used, and benefit, the community and environment where possible and not leave any liability to the state or impacts on the community and environment.”</i>	This is an unrealistic objective.
15 2 <sup>nd</sup> para	<i>“A rehabilitation plan must include proposed post-quarrying land uses for each rehabilitation domain. The proposed post-quarrying land uses must be discussed with the community (including the landowner, and for Crown land, Traditional Owners) and the rehabilitation plan is to set out how this consultation informed the proposed post-quarrying land uses.”</i>	Post quarrying land uses will change with time. Additionally, the community and their aspirations will change with time especially where a quarry is in operation for 30+ years.

Page number	Draft Guideline	CMPA comments
15, dot points	<ul style="list-style-type: none"> <li>• <i>“community views</i></li> <li>• <i>any relevant guidance on strategic land use planning or zoning requirements issued by Councils, or other regulatory authorities</i></li> <li>• <i>the pre-quarrying land use, and the appropriateness of returning the land to this use</i></li> <li>• <i>negative aesthetic impacts and how rehabilitation will mitigate them</i></li> <li>• <i>the proximity of the site to sensitive receptors</i></li> <li>• <i>for Crown land, the views and aspirations of Traditional Owners.”</i></li> </ul>	<p>The landowner’s views need to be included.</p>
16, dot points	<ul style="list-style-type: none"> <li>• <b>“Risk Management Plan</b> – <i>have the residual risks been reduced as far as reasonably practicable</i></li> <li>• <b>Achievable</b> – <i>is the post-quarrying land form achievable with consideration to the sites inherent constraints</i></li> <li>• <b>Safe, stable and sustainable</b> – <i>guidance on how Earth Resources Regulation interprets this requirement is set out at section 3</i></li> <li>• <b>Capable of supporting the proposed post-quarrying land uses</b> – <i>Earth Resources</i></li> </ul>	<p>The requirements for the rehabilitation plan for the post-quarrying land form are written as though there is a great certainty in out come than can actually be achieved and, hence, is unrealistic.</p> <p>The final dot point requires expertise and experience that ERR currently does not have.</p>

Page number	Draft Guideline	CMPA comments
	<i>Regulation will examine the appropriateness of the post-quarrying land forms relative to the proposed post-quarrying land uses."</i>	
16, 2 <sup>nd</sup> para	<i>"All rehabilitation programs should aim to achieve a post-quarrying land form that requires little to no ongoing monitoring or maintenance as a result of quarrying activities."</i>	These will become the landowner's responsibility.
16, last para	<i>"The level of detail required in the rehabilitation plan for post-quarrying land forms will be proportionate to the scale of the operation and the proposed post-quarrying land uses."</i>	This may be the case, however, the level of documentation to read and comprehend is disproportionate for a small quarry owner.
17, dot points 1-5	<ul style="list-style-type: none"> <li>• <i>"describe the post quarrying land form</i></li> <li>• <i>set out key characteristics of the post-quarrying land form, having regard to the proposed post-quarrying land use</i></li> <li>• <i>outline practicality and achievability of the rehabilitated land form, including what resources will be required and their availability</i></li> <li>• <i>explain the activities involved in forming (e.g. blasting, dozing) the land form</i></li> <li>• <i>demonstrate that the land form can adjust to threatening events such as fire, flood and drought."</i></li> </ul>	The rehabilitation plan is expected to detail the land form that will be achieved to complete rehabilitation, however, the end land form is more than likely to change with time.
17, section 4.6	<b><i>"Regulatory requirements – rehabilitation domains</i></b> <i>Regulation 11(2)(c) requires a rehabilitation plan to include</i>	In terms of the "rehabilitation domains", the Guideline suggests this is a highly complex task which will require individual "technical reports" for "Information requirements" (see section 4.6 and



Page number	Draft Guideline	CMPA comments
	<i>objectives that set out <b>distinct rehabilitation domains</b> that collectively amount to the land form described in paragraph (b)."</i>	Table 5 of the Guideline). There will only be a small number of domains applicable to the majority of quarries – i.e. quarry floor, terminated faces, retained hardstands roads and infrastructure, and retained buffers and vegetation. Surely with the State having had rehabilitation as a condition of license as early as 1867, these domains are known and structured.
18, dot points	<i>"Information requirements"</i>	There is a long list of information requirements such as <i>"rehabilitation and closure designs, design concepts and cross sections of land forms and voids at a relevant scale"</i> and <i>"environmental models used to predict long-term rehabilitation performance or environmental impacts"</i> which suggests a greater certainty than actually occurs in reality at the commencement. This information is also in the work plan.
22/23	<ul style="list-style-type: none"> <li>• <i>"inadequate management of hazardous materials, wastes and contaminated sites that leaves a large post-rehabilitation risk or negative legacy that has to be managed"</i></li> <li>• <i>subsidence/collapse of underground workings"</i></li> </ul>	A long list of rehabilitation risks is given some of which are more suited to mines than to quarries as detailed in the middle column.
23	<ul style="list-style-type: none"> <li>• <i>"making new land accessible for development (housing, industrial, or other use)"</i></li> <li>• <i>restoring native ecosystems where they have been cleared for prior grazing or other uses before quarrying"</i></li> <li>• <i>connecting wildlife corridors (beyond boundaries) through final rehabilitation within quarry boundaries"</i></li> <li>• <i>examining alternative post-quarrying land"</i></li> </ul>	Common rehabilitation opportunities as written may lead to unrealistic expectations

Page number	Draft Guideline	CMPA comments
	<p><i>uses that meet an emerging community need through close engagement</i></p> <ul style="list-style-type: none"> <li>• <i>restoring aquatic habitat and enhancing riparian zones that were degraded</i></li> <li>• <i>building positive relationships with the local community through effective and open involvement</i></li> <li>• <i>sharing learnings (successes and failures) with neighbouring quarries or commodity-specific groups to enhance learning</i></li> <li>• <i>Indigenous land use."</i></li> </ul>	
26	<i>"Template Rehabilitation Plan"</i>	It is good to see a template for a common quarry type in Victoria (single bench hard rock quarry). However, there is a crossover with information required in the work plan
31	<i>"Example rehabilitation table <b>At Environmental Impact Assessment stage:</b> Identify potential health risks for closure, through baseline studies of water, soils and geology, quarrying method and mineral processing."</i>	Generally, mineral processing does not occur in the extractive industry.
35	<i>"<b>During operations</b> monitor water (surface and ground), sediment and air quality to inform R&amp;C and ensure ultimate achievement of criteria. Data are gathered, analysed and reported on at regular intervals so that any deviations are detected early and responded to."</i>	Duplication with work plan requirements.
36	<i>"<b>During operations</b> continue to consult with stakeholders on land and water uses, noting progressive</i>	Agreement may not necessarily be achieved with stakeholders. Consultation requirements are disproportionate for small quarries.

Page number	Draft Guideline	CMPA comments
	<i>rehabilitation and new knowledge. Keep records on meetings. Update risk assessments using stakeholder input as well as new knowledge. Document all key decisions made and how agreement is reached.”</i>	
37	<b>“At Environmental Impact Assessment stage a competent geotechnical engineer must design the ultimate quarry terminal and rehabilitated slopes to ensure in perpetuity stability.”</b>	Would a competent engineer sign off on “in perpetuity stability”?
39	<b>“During operations construction of quarry pit walls to design, combined with monitoring ensures design is checked, verified or modified to address shortfalls for stability. Regularly review stability risk through quarry’s life to take account of new knowledge from monitoring, to ensure consistency of construction of pit walls and associated drainage and progressive rehabilitation where possible, with CC as agreed with regulator/ stakeholders.”</b>	This requirement duplicates work plan content.
39	<b>“After decommissioning and rehabilitation encapsulation works signed off by competent geotechnical engineer. Performance monitored, interpreted and reported in first x years after closure as agreed. Maintenance of pit walls for X years if required.”</b>	The landowner has some responsibility.
40	<b>“During operations gather water quality data from dewatering (groundwater) and surface water to build the data base on water quality</b>	This requirement duplicates work plan content.

Page number	Draft Guideline	CMPA comments
	<i>onsite and the receiving environment."</i>	
45	<ul style="list-style-type: none"> <li>• <i>"Design life/structural life specified (e.g. 100, 200, 1,000 or 10,000 years post-closure)"</i></li> </ul>	<p>The example may lead to unrealistic expectations. Under the Extractive Industries Development Act (see below), the extractive industry had some surety at a timeframe of 6 years but this is yet another example of lost rights in the merger with the MR(SD)A. The extractive industry sector will be looking at taking on obligations for say <i>"200 years post-closure"</i> – well beyond the design life of, for example, Highpoint Shopping Centre!</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>(6) The Minister must return to the holder of the work authority or the former holder of the work authority as soon as possible after the end of the period of 6 years after the work authority ceased to be in force any part of the amount of the bond or bonds that has not been returned or spent under sub-section (1).</p> </div> <p><i>Extractive Industries Development Act 1995 incorporating amendments as at <a href="#">19 October 2007</a>; clause 36(6)</i></p>
57, Table 5.	<i>"Crushing and other quarrying equipment is to be sold to another operator so it can continue to be used on another quarry site"</i>	<p>This and other similar statements misunderstand the industry's operational practices, does not appreciate both the commercial arrangements in place and that the State has no ownership rights, and continue to encourage the destruction of the industry's industrial heritage. It would be much more useful were domains sorted into an order relevant to the quarrying sector and ERR's knowledge used to eliminate the need for <i>"scheduling information for material stockpiling"</i>, <i>"technical reports"</i> and <i>"environmental models"</i> for quarries that undertake standard practice and/or are in their infancy.</p>

## Summary

The Draft Guideline is lengthy and obscure in places. Much of what is required is also duplicated in the work plan. Similarity also exists between the proposed Rehabilitation Plan and both the Community Engagement Plan under the MR(SD)A and consultation obligations under the Planning and Environment Act 1987.

Despite stating to the contrary, proportionality is very much absent and the statement that a small quarry owner would be able to complete the work plan themselves (which is supported) would not be the case if using this Draft Guideline and all the other associated documents referred to.

Quarry operators, and particularly CMPA Members, are closely connected to the resource they are extracting and the community in which they operate. These resources are owned by a landowner, not necessarily the State, and it is only with the landowner's express and ongoing permission in the form of a commercial undertaking that an operator can undertake extraction. It remains to be proven if the State could access a site to carry out rehabilitation works if the landowner refused. Rehabilitating these sites commences from the day the site opens.

The Draft Guideline has not captured the significance of the landowner's opinions and needs; and commercial arrangements. It is their right as landowner to choose what is retained onsite, who has access to the site (page 60) and approve the final rehabilitation form irrespective of what other third parties feel. The Guideline does not acknowledge that in many cases the original Work Authority holder will rehabilitate a site to 'safe and stable' and will then hand it onto another party to carry out the transformation of the site or conduct an alternative business in the space available. This practice has enabled sites such as Highpoint Shopping Centre, various football fields and swimming pools, recycling facilities and most recently [New Epping](#). It is doubtful that these were envisioned when those sites first commenced (see section 4.5 of the Guideline). Rather the broad land form and concepts could be identified and should be refined as the site approaches its eventual closure – say 12 months prior.

The Draft Guideline needs to be refined as it has been written for an environment where rehabilitation is a separate activity from quarrying and is carried out without consideration of previous works. This is certainly not the case in the quarrying sector with progressive rehabilitation being fundamental to a site's successful operation.

There is a lack of understanding by ERR that the extractive industry (lower and different risk profile) is required to consult under the MRSD Act and the Planning and Environment Act 1987; whereas the mining industry is only required to consult under the MRSD Act.

There needs to be a regulatory impact statement conducted due to the regulatory creep in the Draft Guideline: the Draft Guideline states up front (page 2.) that it “...aims to enhance regulatory certainty and minimise regulatory burden...”. No proof has been provided in the Draft Guideline that there is regulatory certainty, nor that regulatory burden will be minimised.

There is regulatory creep occurring with each subsequent document produced by ERR without thought given to their purpose. For example, the Draft Guideline introduces the addition of more new terms such as “*Environmental Impact Assessment*”, “*Conservation Management Plan*”, “*IAP2 spectrum*” and “*Society for Ecological Restoration Australia (SERA) guidelines*”. Such terms will almost certainly create regulatory creep as operators and expensive consultants attempt to define, create and defend these over time.

At present the purpose appears (understandably) to be removal of all risk and liability to the Victorian Government. However, by having numerous plans with duplicated, overly complicated, and unnecessary requirements the purpose is being defeated because it does not lend itself to providing a concise and coherent work plan for the day-to-day management of a quarry as originally intended.

To sum up, a quote from an extractive industry operator:

“The level of complexity sets us up for failure.”

Hence, the Draft Guideline is **not supported** in its current form.

I would be happy to discuss our submission further at your invitation.

Yours sincerely

A handwritten signature in black ink that reads "EMGibson". The letters are cursive and somewhat stylized.

Dr Elizabeth Gibson  
General Manager  
Mobile: 0434 692 618  
Email: [elizabeth.gibson@cmpavic.asn.au](mailto:elizabeth.gibson@cmpavic.asn.au)